APPENDIX D1 - RESPONSE TO COMMENTS FOR NPDES PERMIT WA-0000825

INLAND EMPIRE PAPER COMPANY

The Department received written comments and public hearing testimony on the proposed permit (comment period end date of November 17, 2010) from the Permittee and the following Indian Tribes, Agencies and Individuals:

List of Tribal Respondents
Spokane Tribe of Indians (ST)
List of Agency/Municipal/Governmental Respondents
Environmental Protection Agency (EPA) Town of Millwood (M) U.S. Congresswoman Cathy McMorris Rodgers (PT) Washington State Senator Bob McCaslin (SL) Washington State Representatives Larry Crouse and Matt Shea (SL)
List of Organizational Respondents
Avista Utilities (AV) Lake Spokane Association (LSA) Sierra Club (SC) Spokane Riverkeeper (SR) Lands Council (SR) Kootenai Environmental Alliance (SR) Gonzaga University, Legal Assistance Environmental Law Clinic (SR)
Nine Individual Respondents (C, PT)

Ecology summarized the changes made to the permit based on the comments in Tables 1 and 2, below. The remaining pages contain the written comments and public hearing transcript along with Ecology's response to each comment. Ecology considered these comments and made changes in the final permit as determined appropriate.

In addition, Ecology made the following changes to the final permit and fact sheet:

- Ecology updated the table on page 13 of the fact sheet listing the schedule of actions during managed implementation plan to reflect the issuance date of the permit.
- Ecology discovered a calculation error in the end-of-pipe metals limits for cadmium and lead. The calculations used incorrect values for translating a dissolved metal water quality criteria into a total metals permit limit. Ecology included the revised spreadsheet (Appendix D) in the final fact sheet, and incorporated the revised limits in the final permit. Using the correct metal translator values resulted in higher permits limits for cadmium and lead.
- After the close of the public comment period, Ecology had further conversations with the US EPA, Spokane Tribe of Indians and the Permittee regarding PCBs discharged to the Spokane River. The parties agreed on an additional condition in the final permit which requires the Permittee to participate in the creation of a Regional Toxics Task Force for the Spokane River. The Task Force will develop a comprehensive plan with the goal of bringing the Spokane River into compliance with applicable water quality standards for PCBs. Ecology included this condition in other NPDES permits issued on the Spokane River (City of Spokane, Liberty Lake Sewer and Water District, Inland Empire Paper Company, and the proposed permit for Spokane County). Ecology added language to the Task Force condition for contingency if the Permittees cannot reach an agreement on the organizational structure of the Task Force.

Table 1 Summary of Permit Condition Modifications

Proposed Permit	Final Permit	Applicable Comments	Reason
Condition S.3, Monitoring Requirements: PCB monitoring once/quarter	PCB Monitoring once every two months for the first eighteen months of the permit; thereafter once per quarter.	C-3, C-6, C-15, C-16, LS-4, PH-17, SC-5, ST-1, ST-1, SR-1, SR-3, SR-5	In order to set a numeric PCB effluent limit within this permit term, Ecology has increase initial PCB effluent monitoring.
Condition S.4, Total Phosphorus, CBOD, and Ammonia BMP Plan: Initial update due March 31, 2012.	Total Phosphorus, CBOD, and Ammonia BMP Plan initial update due November 1, 2013, a year following the BMP plan due date (November 1, 2012).	IE-4 and IE-6	Updated plan will be due one year after initial BMP Plan submittal. Ecology has changed the due date to the same calendar day as the due date for the first BMP Plan (November 1st).
Condition S.5, Schedule of Compliance: due dates for Delta Elimination Plan and Technology Selection Protocol (two years after permit effluent date); due date for Engineering Report (three years after permit effective date); and due date for Installation and Operation of Treatment Technology (five years after permit effective date).	Condition S.5, Schedule of Compliance: due dates for Delta Elimination Plan and Technology Selection Protocol (four years after permit effluent date); due date for Engineering Report (five years after permit effective date); and due date for Installation and Operation of Treatment Technology (seven years after permit effective date).	IE-50	In order to allow the Permittee time necessary to evaluate potential new technologies, Ecology has lengthened the compliance schedule for these interim actions (Delta Elimination Plan, Technology Selection Protocol, Engineering Report, and Installation and Operation of the Treatment Technology) in the final permit by two years.
Condition S.6, PCB BMP Plan: PCB BMP Plan due ahead of PCB Source Identification Study	Condition S.6, PCB BMP Plan: PCB Source Identification Study due ahead of PCB BMP Plan	IE-10	Ecology rearranged this section because a more thorough and complete BMP plan would include results from the PCB source identification study.
November-February effluent limits: Month Avg / Daily Max BOD, lbs/day 3,816 / 7,238 TSS, lbs/day 7,016 / 13,185	November-February effluent limits[1]: Month Avg / Daily Max BOD, lbs/day 3,530 / 6,655 TSS, lbs/day 6,392 / 12,070	PH-33, SR-28	Ecology has re-evaluated its calculations for these limits during the high flow season and used NSPS guidelines for the incremental increase in the mechanical pulp production that occurred over the last permit cycle. Ecology originally used the BCT/BPT guidelines for the entire mechanical pulp production.

[1]Calculations are as follows:

Technology Based Effluent Guidelines:

Subcategory	Pollutant	Average Monthly	Maximum Daily
BCT/BPT Mechanical Pulp (40 CFR 430, Subpart G)	BOD, lbs/1,000 lbs of product	3.9	7.45
	TSS, lbs/1,000 lbs of product	6.85	12.75
NSPS Mechanical Pulp (40 CFR 430, Subpart G)	BOD, lbs/1,000 lbs of product	2.5	4.6
	TSS, lbs/1,000 lbs of product	3.8	7.3
NSPS Secondary Fiber Deink (40 CFR 430, Subpart I)	BOD, lbs/1,000 lbs of product	3.2	6.0
	TSS, lbs/1,000 lbs of product	6.3	12.0

Subcategory Limits:

Pollutant	Average Monthly	Maximum Daily
BOD, lbs/day	1,544.4	2,950.2
TSS, lbs/day	2,712.6	5,049.0
BOD, lbs/day	511.6	941.3
TSS, lbs/day	777.6	1,493.9
BOD, lbs/day	1,473.8	2,763.4
TSS, lbs/day	2,901.5	5,526.7

Ecology used production values as follows: BCT/BPT Mechanical Pulp of 198 tons/day; NSPS Mechanical Pulp of 102.3 tons/day; and NSPS Secondary Fiber Deink of 230.3 tons/day.

Table 2 Summary of Permit Language Modifications

Permit Condition	Modification	Applicable Comments	Reason
Condition S.2, Monitoring Requirements	Added language to PCB monitoring requirements stating that once initial PCB monitoring is completed (after eighteen months), Ecology plans to reopen permit to set a performance based PCB effluent limit.	C-3, C-6, C-15, C-16, SR-1, SR-2, SR-3.	The numeric PCB limit will help ensure the discharge will not worsen the PCB conditions in the Spokane River.
Condition S.4, Total Phosphorus, CBOD, and Ammonia BMP Plan	Added '…maintain *or lower* effluent concentrations…'	AV-1	The goal of the BMP plan would including lowering, in addition to maintaining, effluent concentrations of these pollutants
Condition S.5, Schedule of Compliance for Total Phosphorus, CBOD, and Ammonia, footnote b	Clarified compliance schedule language to include references to pollutant trading consistent with the Water Quality Trading Framework, implementation of a multi-facility 'bubble limit' concept, and extension of the critical season into January and February.	AV-4, PH-8, SR-12, SR-19	Ecology updated the language to include current delta elimination/trading/effluent limit topics currently being discussed by Stakeholders and Spokane River DO TMDL Implementation Committee.
Condition S.5, Schedule of Compliance for Total Phosphorus, CBOD, and Ammonia, footnotes b and f	Deleted the term 'is not reactive' in referring to phosphorus bioavailability	IE-45	Ecology agreed with the comment that 'is not reactive' is confusing when referencing bioavailable phosphorus.
Condition S.5, Schedule of Compliance for Total Phosphorus, CBOD, and Ammonia, footnote c	Added language stating that Ecology will consider pilot plant testing results conducted prior to the issuance of this permit.	IE-48	Ecology added this consideration to acknowledge the pilot testing results conducted prior to permit issuance.
Condition S.5, Schedule of Compliance for Total Phosphorus, CBOD, and Ammonia, footnote f	Added a statement that any revisions to WQBELs must ensure the DO responsibility for Avista remains unchanged.	AV-2	Ecology acknowledges that any revisions to WQBELs must not shift any further DO responsibility to Avista.
Condition S.5, Schedule of Compliance for Total Phosphorus, CBOD, and Ammonia	Added language stating the compliance date for meeting the final WQBELs will be ten years after the permit effective date (*unless a longer compliance schedule becomes available under RCW 90.48.605).*	IE-41	The fact sheet acknowledged that RCW 90.48.605 allows compliance schedules in excess of 10 years as long as certain conditions are met.
Condition S.5, Schedule of Compliance for Total Phosphorus, CBOD, and Ammonia, footnote f	Added language for consideration of background nutrient concentrations in the facility's non-contact cooling water (NCCW) toward meeting compliance with the final water quality based effluent limits.	IE-50	Ecology believes that the nutrient concentrations in the NCCW supply well, to the extent they are equal to nutrient concentrations in the Spokane River upstream of the site, should not be counted toward compliance with the final water quality based limits.
References to 'Delta Management'	Changed to 'Delta Elimination'	EPA-3, IE-16	Ecology wished to remain consistent with the Foundational Concepts document, which used the term 'Delta Elimination'.

COMMENTS TO NPDES WA-0000825, INLAND EMPIRE PAPER	RESPONSES
AVISTA November 17, 2010 Permit Coordinator Washington Department of Ecology 4601 N. Monroe Street Spokane, WA 99205 **Re: Comments on Draft NPDES Permits Regarding the Spokane River for Inland Empire Paper Company, Kaiser Aluminum, Liberty Lake Sewer and Water District, and the City of Spokane Riverside Park Facility** Dear Sir/Madam: I am writing to provide comments on the draft NPDES permits for the following facilities discharging to the Spokane River: Inland Empire Paper Company (Permit No. WA-000082-5); Kaiser Aluminum (Permit No. WA-000089-2); Liberty Lake Sewer and Water District (Permit No. WA-0045144); and the City of Spokane Riverside Park Water Reclamation Facility and Combined Sewer Overflows (Permit No. WA-002447-3). **AV-1** 1. In the Inland Empire and Kaiser permits, please revise the first sentence in Condition S4 to read as follows: "The goal of this BMP plan is to reduce effluent concentrations of total phosphorus, CBOD, and ammonia below current discharge levels." The current language indicates that maintaining effluent concentrations at current discharge levels would satisfy the goal of the BMP plan. For the same reason, on page 17 of the Inland Empire Factsheet draft permit, the second full sentence should be revised to state that "The goal of the BMP plan is to lower these pollutants in the effluent …." **AV-2** 2. Condition S5 in the Inland Empire and Kaiser permits includes a table of target pursuit actions and compliance dates. The final target pursuit action, "Meet Final Water Quality Based Effluent Limits," has a footnote stating that Ecology "may adjust the final water quality based effluent limitations on the basis of new information," including "the results of the Avista Dissolved Oxygen Water Quality Attainment Plan." Avista assumes that any adjustment made to the final effluent limits would be to make the limits more stringent, because adjusting the limits to make them less stringent would be prohibited by the anti-backsliding provision of the Clean Water Act. Is our assumption correct? Otherwise, we are concerned that any adjustment could place an additional burden on Avista. **AV-3** 3. The permits for Kaiser and Inland Empire set effluent limits based on "seasonal averages," but do not explain how a seasonal average is to be calculated. Please explain. **AV-4** 4. None of the permits refer to the Water Quality Trading Framework that Ecology is preparing (although the Liberty Lake and City of Spokane permits at least mention the concept of trading -- see Condition S11.A in the Liberty Lake permit and S15.A in the City of Spokane permit, which state that: "The Engineering Report is to address the following topics based on rule requirements, pollutant equivalency consideration, potential for offset creation and 1411 East Mission Avenue PO Box 3727 Spokane, Washington 99220-3727 800.227.9187 www.avistautilities.com	AV-1. Restated, Ecology intended the BMP plans to maintain effluent concentrations at current discharge levels. However, Ecology expects successful implementation of a BMP plan would reduce effluent concentration of these pollutants. Therefore, Ecology has changed the language in the final permits as follows: "The goal of this BMP plan is to maintain or reduce effluent concentrations of total phosphorus, CBOD, and ammonia". AV-2. Depending on the circumstances, the final water quality based effluent limits may move up or down. Exceptions to anti-backsliding provisions allow for changes that result in less stringent effluent limits, based on new information. Ecology, in making changes to WLAs, will make certain the resultant dissolved oxygen depletion matches those in the approved TMDL. Ecology has also added language to the compliance schedule stating less stringent effluent limitations "must ensure the dissolved oxygen responsibility for Avista identified in Table 7 of the DO TMDL remains unchanged." AV-3. Ecology mistakenly did not include a 'seasonal average' definition in either the permit or fact sheet. A discharge would calculate a seasonal average by summing all daily discharges of phosphorus measured during the March to October time period divided by the number of daily discharges measured during the same time period. AV-4. Ecology has clarified the delta elimination language in the final permit to include items addressed in our current draft trading framework and incorporation of a possible multi-facility bubble limitation. Until we complete this framework, the permits can only provide future opportunities to make use of results from both the trading frame work and recommendations from the Spokane River DO TMDL Implementation Advisory Committee. Ecology believes the engineering report is an appropriate tool for presenting exact details of how individual dischargers propose to use the trading framework individually or collectively.

COMMENTS TO NPDES WA-0000825, INLAND EMPIRE PAPER	RESPONSES
Permit Coordinator *Department of Ecology* *November 17, 2010* *Page 2* **AV-4 (con'd)** management including trading, etc."). Each of the draft permits should be revised to explicitly allow dischargers to use credits created under the Trading Framework to help meet water quality based effluent limits. 5. We have several questions regarding offsets and offset plans: **AV-5** (a) Why do the draft NPDES permits and factsheets for the City of Spokane and Liberty Lake contain provisions regarding offsets and offset plans, but the draft NPDES permits and factsheets for IEP and Kaiser do not? (b) Please explain how an offset plan (as that term is used in the draft permits and factsheets for City of Spokane and Liberty Lake) relates to the Trading Framework. (c) Please explain how an offset plan (as that term is used in the draft permits and factsheets for City of Spokane and Liberty Lake) relates to the Delta Elimination Plan. (d) The draft permits and factsheets for both the City of Spokane and Liberty Lake state that "Offset Plan: Not a requirement in the proposed permit. In the next permit cycle it is anticipated that an Offset Plan will be required." *See* p. 32 of the City of Spokane factsheet and p. 26 of the Liberty Lake factsheet. However, p. 35 of the City of Spokane factsheet indicates that the permittee is required to submit its initial Annual Offset Plan Update in February, 2013. Because the draft permit will not expire until 2015, does that not make the submission of the initial Annual Offset Plan Update a requirement of this permit? Also, why is Liberty Lake not required to submit its initial Annual Offset Plan Update by the same date? 6. In the City of Spokane permit, footnote 6 to the S2 Monitoring Requirements states as follows: > Beginning March 1, 2018; for the 3 parameters ($CBOD_5$, NH_3 and TP) with WLAs established by the Spokane River and Lake Spokane DO TMDL, the monthly discharge monitoring report must provide the following information for the "ten year assessment" monitoring and future compliance projections: monthly average, daily maximum, running total for the "season," running average for the "season," projected trend of total lbs. and average concentration and average daily lbs. for remainder of the "season" with future compliance target indicated. If the trend projection indicates a probability of noncompliance with the allowable mass limitations to be in effect once the period of formal compliance begins in 2021, the permittee is to communicate the anticipated result of the projection to the Department with appropriate recommendations. Regarding this language, please change "probability of noncompliance" to "significant potential for noncompliance," and at the end of the last sentence add "to avoid a trend that would result in noncompliance." "Probability of noncompliance" at least suggests that the City of Spokane need not report unless the likelihood of noncompliance exceeds 50 percent, a standard inconsistent with the Clean Water Act. Please also define "season" for purposes of this footnote, since that term refers to at least three different time spans elsewhere in the City of Spokane draft permit.	AV-5. In this permit, Ecology wished to remain consistent with the Foundational Concepts document. This document referred to 'delta' as the gap between the level technology would achieve and the final water quality based effluent limit (WQBEL). 'Delta elimination' would include any measures that eliminate the delta, allowing the facility to meet their final WQBEL. At present, delta elimination may include re-use of effluent, consideration of biological available phosphorus, approved trades consistent with the Water Quality Trading Framework developed by Ecology and the DO TMDL Implementation Advisory Committee, pollutant equivalency, and implementation of a 'bubble limit' concept for interested dischargers.

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Permit Coordinator *Department of Ecology* *November 17, 2010* *Page 3* *See, e.g.,* page 8 of draft permit, where there is reference to the "season" of March 1 to May 31, the "season" of June 1 to September 30, and the "season" of October 1 to October 31. **AV-6** 7. The factsheets for Kaiser Aluminum (page 18) and Inland Empire Paper Company (page 13) contain a table labeled "NPDES Permit Cycle." The table includes Avista, despite the fact that it is not subject to an NPDES permit. Furthermore, the table incorrectly characterizes Avista's implementation schedule under its Section 401 Certification. To avoid confusion and to make Avista's implementation schedule consistent with its Section 401 Certification, please remove Avista from the table and include immediately below the table the following narrative summary of Avista's schedule: **AV-7** Avista's Lake Spokane Dissolved Oxygen Water Quality Attainment Plan (DO WQAP) will be submitted to Ecology for review and approval by May 27, 2012. Avista must also submit the DO WQAP to the Federal Energy Regulatory Commission (FERC) for approval, and cannot proceed with any mitigation/implementation activities identified in the DO WQAP until it receives FERC approval. The DO WQAP will contain a compliance schedule for implementation that to the degree reasonable and feasible is synchronized with the milestones and assessments of the DO TMDL for the Spokane River, but does not exceed ten years (WAC 173-201A-510(5)). If at the end of the ten year compliance period, Avista is unable to address its proportional level of responsibility as determined in the DO TMDL, after evaluating and implementing all reasonable and feasible alternatives under WAC 173-201A-510(5)(g), then Avista will propose an alternative action to achieve compliance with the DO TMDL, such as new reasonable and feasible technologies or other options to achieve compliance with the DO TMDL, a new compliance schedule, or other alternatives as allowed by WAC173-201A-510(5)(g). Please also explain why Avista's DO WQAP is referenced in the Kaiser and IEP factsheets, but not in the factsheets for Liberty Lake Sewer and Water District or for the City of Spokane. We appreciate your consideration of our comments. Please feel free to call me at (509) 495-4998 if you have any questions. Very truly yours, Elvin "Speed" Fitzhugh Spokane River License Manager	AV-6. Ecology intended the 'NPDES Permit Cycle' heading as a timeline in 5 year increments, not to mean Avista had an NPDES permit. AV-7. Ecology borrowed this table from the final Spokane River DO TMDL, Table 10 on page 74. The submittal dates appearing in the fact sheet differ slight from those in the TMDL for Avista's Water Quality Attainment Plan and subsequent compliance items. Accordingly, Ecology has changed these dates to in the final fact sheet to match those in the final TMDL.

COMMENTS TO NPDES WA-0000825, INLAND EMPIRE PAPER	RESPONSES

Joy, Shara-Li (ECY)

From: Darrell, Ginny (ECY)
Sent: Monday, November 22, 2010 11:50 AM
To: Joy, Shara-Li (ECY)
Subject: FW: NPDES for Spokane River

This was in my Inbox - please include in the Spokane River permit comments.

- Ginny

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C-1 The Department of Ecology must ensure that NPDES permits include effluent limits for PCBs, ammonia, phosphorus, temperature, dioxin, CBOD, and other parameters that will be protective of Washington's and the Spokane Tribe's water quality standards. The proposal as it is does not protect enough.

As a physician, I want to emphasize the importance to the people of Spokane and all of the Pacific NW to have safe waters. And remember that the Spokane River does drain into Puget Sound, which is in need of much lower and safer levels of toxins and effluents. Do the right thing!

C-2 I support the limits suggested by the Sierra Club. All permits need to be based on the CeQual model for establishing critical river conditions for permit limit calculations in the river during the 1-in-10 year flow year of 2001. All permits must use end-of-pipe water

C-3 quality-based limits for PCB until a TMDL assigns a WLA in an approved TMDL. NPDES permits should not use technology-based limits or BMPs. Critical river conditions for all permittees

C-4 must be based on the 2001 parameters estimated from the 2001 calibrated CeQual model for the segment at the discharge point. Those WQ conditions are the best estimate of critical parameters present during a 1 in 10 year flow condition at that location. Kaiser needs

C-5 separately monitor PCBs in the process stream and groundwater to prevent dilution and to provide more reliable results. The Liberty Lake design criteria (as with Spokane's) have not been confirmed to be able to achieve WQ criteria at design flow or to comply with Tier 2 Antidegradation requirements. Although there were known WQ problems with discharge expansion several years ago, the expansion was approved anyway. Liberty Lake should receive interim performance-based limits to prevent further degradation of the Spokane River and Lake Spokane until such time as DO TMDL implementation demonstrates improvements in water quality.

C-6 Pollutants in the waste stream and listed in the 303(d) list such as PCBs must have limits in the permit. If there is no WLA for the discharge in an approved TMDL, then there is no

C-7 allowable mixing zone - and end-of-pipe WQ-based limits must be applied. WQ-based arsenic limits now need to be implemented after more than 10 years of delay. Final limits for oxygen

C-8 demanding pollutants must be placed in the permit and the compliance schedule cannot exceed 5 years in the permit. Any interim limits and compliance schedule exceeding the 5-year maximum permit life must be contained in an administrative order. Because implementation of the

C-9 metals TMDL has been delayed excessively, the metals limits should use end-of-pipe limits as interim until a year of monitoring establishes performance. At that point, most stringent of either performance-based or end-of-pipe limits should become automatically effective per the procedure outlined in the metals TMDL. Fecal coliforms are common in undisinfected pulp mill

C-10 effluent along with opportunistic pathogens. Permit limits consistent with meeting water

1

C-1. Ecology believes the final permit includes all limitations necessary to protect receiving water quality criteria.

C-2. Critical flows used to set permit limits varied by the pollutant. Ecology used the 1 in 10 low flow of year 2001 to set water quality based limits for phosphorus, CBOD, and ammonia to protect receiving water dissolved oxygen criteria. For other parameters, Ecology determines compliance with aquatic life criteria using the 7Q10 river flow (7 day low flow with a reoccurrence probability of 10 years); human health criteria using the 30Q5 river low flow (30 day low flow with a reoccurrence probability of 5 years); and human health carcinogen criteria using the harmonic mean river flow.

C-3. The final permit increases initial PCB effluent monitoring and adds an expected timeframe for setting a performance based numeric PCB effluent limit. The permit also establishes best management practices (BMP) plan for PCB source identification and reduction.

The performance based numeric limit, in addition to the BMP plan, will ensure the discharge will improve, not worsen, the PCB conditions in the Spokane River. Further, these requirements take definitive first steps to bring the Spokane River and Lake Spokane into compliance with the water quality standards for PCBs.

C-4. See response to C-2.

C-5. Kaiser measures PCBs at their final discharge point (Outfall 001). This outfall includes both process/non-contact cooling water (Outfall 006) and a ground water remediation flows. Kaiser uses an ultra low level analytical method that routinely detects PCBs at Outfall 001. This method provides reliable PCB results for the combined waste streams.

C-6. In addition to the BMP plan for PCB source identification and reduction, Ecology plans to set a performance based PCB effluent limit within this permit term. See response to comment C-3.

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As a physician, I want to emphasize the importance to the people of Spokane and all of the Pacific NW to have safe waters. And remember that the Spokane River does drain into Puget Sound, which is in need of much lower and safer levels of toxins and effluents. Do the right thing!

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C-5 separately monitor PCBs in the process stream and groundwater to prevent dilution and to provide more reliable results. The Liberty Lake design criteria (as with Spokane's) have not been confirmed to be able to achieve WQ criteria at design flow or to comply with Tier 2 Antidegradation requirements. Although there were known WQ problems with discharge expansion several years ago, the expansion was approved anyway. Liberty Lake should receive interim performance-based limits to prevent further degradation of the Spokane River and Lake Spokane until such time as DO TMDL implementation demonstrates improvements in water quality.

C-6 Pollutants in the waste stream and listed in the 303(d) list such as PCBs must have limits in the permit. If there is no WLA for the discharge in an approved TMDL, then there is no allowable mixing zone - and end-of-pipe WQ-based limits must be applied. WQ-based arsenic

C-7 limits now need to be implemented after more than 10 years of delay. Final limits for oxygen demanding pollutants must be placed in the permit and the compliance schedule cannot exceed 5

C-8 years in the permit. Any interim limits and compliance schedule exceeding the 5-year maximum permit life must be contained in an administrative order. Because implementation of the metals TMDL has been delayed excessively, the metals limits should use end-of-pipe limits as

C-9 interim until a year of monitoring establishes performance. At that point, most stringent of either performance-based or end-of-pipe limits should become automatically effective per the procedure outlined in the metals TMDL. Fecal coliforms are common in undisinfected pulp mill

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C-7. As explained in the fact sheet, the proposed permit will defer any arsenic permit decisions until the many regulatory issues with the human health based arsenic criteria are resolved.

The USEPA adopted risk-based arsenic criteria for the protection of human health for the State of Washington in 1992. This freshwater criterion is 0.018 µg/L, and is based on exposure from fish and shellfish tissue and water ingestion. This criterion is controversial because it differs from the drinking water maximum contaminant level (MCL) of 10 µg/L. Further, the human health criteria are sometimes exceeded by natural background concentrations of arsenic in surface water and ground water.

C-8. The State's Water Quality Standards allows for schedules of compliance, see WAC 173-201A-510 (4). These schedules of compliance "may in no case exceed ten years, and shall generally not exceed the term of any permit", WAC 173-201A-510 (4)(c).

Ecology has set a 10 year compliance schedule considering the complexities of the dissolved oxygen problem in the Spokane River and the nature of the solution. For the Spokane River dischargers, implementation of treatment technology alone may not achieve the final WQBELs for ammonia, CBOD, or total phosphorus. In this case, the Permittees will rely on 'delta elimination' to meet their final limits. The 'delta elimination' options may include an accounting for bioavailable phosphorus, pollutant equivalency, water quality offsets, and water quality trading. With the uncertainties associated with the treatment technologies and delta elimination options, the Department believes the Permittee needs the 10 year compliance schedule specified in the final permit.

C-9. The fact sheet discusses the Spokane River metals TMDL. For Inland Empire, the permit includes an end-of-pipe limit for zinc, lead, and cadmium, consistent with the metals TMDL. Ecology lacked sufficient effluent data to establish performed based effluent limits for these metals.

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C-3 quality-based limits for PCB until a TMDL assigns a WLA in an approved TMDL. NPDES permits should not use technology-based limits or BMPs. Critical river conditions for all permittees

C-4 must be based on the 2001 parameters estimated from the 2001 calibrated CeQual model for the segment at the discharge point. Those WQ conditions are the best estimate of critical

C-5 parameters present during a 1 in 10 year flow condition at that location. Kaiser needs separately monitor PCBs in the process stream and groundwater to prevent dilution and to provide more reliable results. The Liberty Lake design criteria (as with Spokane's) have not been confirmed to be able to achieve WQ criteria at design flow or to comply with Tier 2 Antidegradation requirements. Although there were known WQ problems with discharge expansion several years ago, the expansion was approved anyway. Liberty Lake should receive interim performance-based limits to prevent further degradation of the Spokane River and Lake Spokane until such time as DO TMDL implementation demonstrates improvements in water quality.

C-6 Pollutants in the waste stream and listed in the 303(d) list such as PCBs must have limits in the permit. If there is no WLA for the discharge in an approved TMDL, then there is no

C-7 allowable mixing zone - and end-of-pipe WQ-based limits must be applied. WQ-based arsenic limits now need to be implemented after more than 10 years of delay. Final limits for oxygen

C-8 demanding pollutants must be placed in the permit and the compliance schedule cannot exceed 5 years in the permit. Any interim limits and compliance schedule exceeding the 5-year maximum permit life must be contained in an administrative order. Because implementation of the

C-9 metals TMDL has been delayed excessively, the metals limits should use end-of-pipe limits as interim until a year of monitoring establishes performance. At that point, most stringent of either performance-based or end-of-pipe limits should become automatically effective per the procedure outlined in the metals TMDL. Fecal coliforms are common in undisinfected pulp mill

C-10 effluent along with opportunistic pathogens. Permit limits consistent with meeting water

1

-continued from previous page-

C-10. Certain bacteria live in the intestinal tracts of animals and aid in the digestion of food. Fecal wastes may contain millions of these naturally occurring organisms plus pathogenic (disease-causing) bacteria, viruses and parasites. When fecal material pollutes a surface water, these pathogenic organisms may pose a health hazard to those who come in contact with the water.

Fecal Coliform are a group of bacteria found in the digestive systems of all warm blooded animals. Ecology uses the Fecal Coliform bacteria test as an indicator of fecal contamination in surface waters. However, Fecal Coliform bacteria also includes *Klebsiella* species. *Klebsiella* bacterial are not necessarily fecal in origin. In addition to the human gastrointestinal tract, *Klebsiella* can be found in soil, water, plants, and pulp and paper mill effluents.

As *Klebsiella* bacteria does not indicate fecal contamination, Ecology does not plan to regulate the bacterial levels that may be present in this discharge.

quality criteria for bacteria must be placed in the permit until quantification of pathogens in IEP effluent is performed by an independent health organization. Pulp mill effluent has been well-documented to cause endocrine disruption in fish including rainbow trout, impairing reproductive and other physiological processes. Because a unique native Red- Band Trout population naturally reproduces in the river near the IEP discharge, it is imperative that the effluent not limit this population's recovery which is also being limited by other water pollution and habitat problems. Exposure to pulp mill phytosterols and other chemicals potentially responsible for endocrine disruption may occur for extended periods since it is likely that the warm IEP discharge creates an attractant to fish when the river is coldest in the winter. This pollution impact from IEP discharges must be shown not to cause any toxic effects in the Red-Band Trout population. Tier 2 Antidegradation rules must be complied with for new or expanded discharges. There is neither an adequate nor up-to-date evaluation accompanying the newly expanded design flow being permitted. Ecology has a state of art model with extensive instream monitoring calibration data for the critical river condition year of 2001. There is no need to delay permit analyses since all receiving stream parameters used for calculating effluent limits within mixing zones for all Spokane River permits should use the model WQ output data for the river segment at each outfall. It is arbitrary to use data from one sampling effort in 1998 or the non-critical flow year of 2005 to characterize the river for 2010 permits.

C-11

C-12

C-13

C-14

Frank I. Backus, MD
12737 - 20th Avenue NE
Seattle, WA 98125-4118
(206) 365-3348
frankbackus@comcast.net

C-11. See response to comment C-10. Ecology does not plan to regulate the bacterial levels that may be present in the effluent.

C-12. Presently, Ecology has no regulatory rules or guidance addressing possible endocrine disruption of fish (including rainbow trout) due to pulp and paper mill effluents. EPA is currently assessing endocrine disruption chemicals including compiling a list of chemicals of concern (http://www.epa.gov/endo/). EPA's list of chemicals of concern do not include phytosterols, or any chemicals detected in routine and special testing of Inland Empire's effluent.

C-13. Tier 2 Antidegradation requirements apply to new or expanded actions that result in a measurable decrease in receiving water quality. Inland Empire Paper Company recently modernized their thermo-mechanical pulping equipment that qualified as an 'expanded action'. However, Ecology concluded the modernization would not cause a measurable decrease in receiving water quality at the edge of the chronic mixing zone boundary. Therefore, the facility did not need a Tier 2 Antidegradation analysis.

However, the facility must comply with Tier 1 Antidegradation requirements. Tier 1 ensures existing dischargers maintain and protect the designated uses of the receiving water. Ecology believes the conditions in this permit will protect existing and designated uses of the receiving water. Additionally, the permit takes appropriate and definitive steps to bring the water quality back into compliance with the water quality standards for dissolved oxygen and PCBs.

C-14. See response to comment C-2.

COMMENTS TO NPDES WA-0000825, INLAND EMPIRE PAPER	RESPONSES

Joy, Shara-Li (ECY)

From: Angie Dierdorff [angie@sunpeopledrygoods.com]
Sent: Monday, November 08, 2010 5:19 PM
To: Joy, Shara-Li (ECY)
Subject: draft permit updates

C-15 I am writing to implore The Washington State DOE to limit PCB levels in the Spokane River in the draft permit updates!

I have been concerned about PCB levels in the Spokane River since 2000, when the levels came to my attention and that of People for Environmental Action and Community Health, of which I was a founder.

C-16 The City of Spokane's Riverside Park Water Reclamation Facility, Inland Empire Paper, Kaiser Aluminum, and the Liberty Lake Sewer and Water District are all significant sources of PCBs. Ecology has a draft PCB cleanup plan that indicates that standards for PCBs in the Spokane River are not being met. The four aforementioned pollution sources contribute to the problem. Drastic reductions in PCBs are required to meet these standards (more than 90% reduction). PCBs are contaminating our fish and beaches throughout the river.

Please do not miss this opportunity to include PCB limits in the draft permits.

Thank you,

Angie Dierdorff
Sun People Dry Goods Co.
24 W. 2nd Ave, Suite 200
Spokane, WA 99201
509-869-9438 (mobile)
angie@sunpeopledrygoods.com
www.sunpeopledrygoods.com
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C-15. See response to comment C-3. The final permit increases initial PCB effluent monitoring and adds an expected timeframe for setting a performance based numeric PCB effluent limit. The permit also establishes best management practices (BMP) plan for PCB source identification and reduction.

The performance based numeric limit, in addition to the BMP plan, will ensure the discharge will improve, not worsen, the PCB conditions in the Spokane River. These requirements take appropriate and definitive first steps to bring the Spokane River and Lake Spokane into compliance with the water quality standards for PCBs.

C-16. See response to comment C-3.

COMMENTS TO NPDES WA-0000825, INLAND EMPIRE PAPER	RESPONSES
Joy, Shara-Li (ECY) **From:** Ken Carmichael [kcarmichael2225@gmail.com] **Sent:** Monday, November 15, 2010 9:13 AM **To:** Joy, Shara-Li (ECY) **Subject:** Water discharge permits on Spokane River I am not a water quality expert nor do I fully understand all of the technical aspects surrounding cleaning up the Spokane River and Lake Spokane. I am a resident that uses the lake frequently and am very familiar with the quality of the water during the summer. I have attended several public meetings on the issue. I recognize that there is a high cost and several technical hurtles to go over in order for us to make significant improvement to the quality of the water. However, with all this said I believe that it is essential for the good of the river and the community as a whole that every conceivable effort be made to maximize our efforts to clean up these waters. **C-17** The reason this has become so expensive is that we have already let it go too long. In the past using the water way as a means of disposal was less expensive and convenient. Now we must pay the price for our past. I believe that we have no choice for our own economic, social and environmental well being but to expect the absolute best efforts to clean up the water. This effort should not be allowed to be delayed, regardless of the cost. Those who have benefited must now step forward and pay the price. Ken Carmichael 466-2225 1	C-17. Ecology believes improvements in water quality will occur relatively quickly coinciding with the installation and operation of treatment technology for phosphorus, ammonia, and CBOD reduction. This will occur at the end of this 5 year permit cycle.

COMMENTS TO NPDES WA-0000825, INLAND EMPIRE PAPER	RESPONSES
Hallinan, Patrick J. (ECY) **Subject:** FW: Water Quality Permit-Spokane -----Original Message----- From: Beth Thew [mailto:bthew@spokanelabor.org] Sent: Wednesday, November 17, 2010 4:29 PM To: Joy, Shara-Li (ECY) Subject: Water Quality Permit-Spokane Dear Ms. Shara-Li Joy, Thank you for the opportunity to comment on Inland Paper Company's draft NPDES permit. Inland Empire Paper Company is one of the cornerstones of the Spokane economy. As Spokane's 3rd largest tax payer IEP provides over 130 family-wage jobs, 87 of which are United Steelworkers, and are responsible for over 600 indirect regional jobs. These jobs bring over $300 million into the local economy, most of which are out-of-state dollars. Governor Gregoire has made a top priority of saving and creating more "green collar" jobs in our state. The union workers at IEP are exactly the kind of jobs the Governor is talking about. We must not lose site that having good paying jobs and having a healthy environment go hand in hand. IEP has not only demonstrated its ability to provide good paying jobs, but also demonstrates its commitment to environmental stewardship in our region. In 2010 they reduced their carbon footprint by over 30,000 tons per year, and they were also the first to install advanced phosphate removal equipment on the Spokane River. They are committed to upgrading their wastewater treatment system with the best treatment technology available and have already invested over 9 million dollars in research and upgrades to the current system. Inland Empire Paper Company expects to invest at least another $10 million in an effort to achieve the most stringent water quality standard in the nation. **C-18** Even with this significant commitment they still cannot meet the standard dictated by the TMDL. We are urging the Department of Ecology to find a viable solution that allows IEP to meet the water quality standard and continue to be a major contributor of family wage jobs in our region and Thank you, Beth Thew Spokane Regional Labor Council, AFL-CIO 509-939-0688 1	C-18. Ecology acknowledges that the Permittee will likely rely on technology plus delta elimination to meet their final water quality based limits. The final permit includes language that enables the facility to meet their final limits with delta elimination options. These options may include trading consistent with Ecology's trading framework, pollutant equivalency, phosphorus bioavailability considerations, and a possible multi-facility bubble limitation.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue
Seattle, WA 98101

Reply to
Attn of: OWW-130

November 16, 2010

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Mr. James Bellatty
Section Manager
Water Quality Program
Washington State Department of Ecology
Eastern Regional Office
North 4601 Monroe
Spokane, Washington 99205-1295

Re: EPA review of Draft NPDES Permits for the City of Spokane Riverside Park Water Reclamation Facility #WA-002447-3, the Liberty Lake Sewer and Water District #WA-004514-4, Inland Empire Paper Company #WA-000082-5, and Kaiser Aluminum Fabricated Products LLC #WA-000089-2

Dear Mr. Bellatty:

EPA has reviewed the most recent versions of the draft National Pollutant Discharge Elimination System (NPDES) permits for the facilities mentioned above. Below are our comments on the draft permits:

City of Spokane Riverside Park Water Reclamation Facility and Spokane County (Pretreatment Program) #WA-002447-3

Permit:

S1.A Interim Effluent Limitations and S1.B Effluent Limitations for Compliance: It appears that the 85 percent removal requirement for TSS was inadvertently left out of the permit. TSS limits in the permit are technology based and must include the secondary treatment requirement for 85 percent removal.

Inland Empire Paper Company #WA-000082-5

Permit:

S5. SCHEDULE OF COMPLIANCE FOR TOTAL PHOSPHORUS, CBOD AND AMMONIA, Footnote f., Page 16:

The final permit must contain WQBELs consistent with the approved Wasteload Allocations (WLAs) for parameters identified in the "Spokane River and Lake Spokane Dissolved Oxygen

COMMENTS TO NPDES WA-0000825, INLAND EMPIRE PAPER	RESPONSES

Total Maximum Daily Load Water Quality Improvement Report" (also known as the Spokane River dissolved oxygen TMDL) as required in 40 CFR 122.44(d)(1)(vii)(B). There appears to be a cut-and-paste error. The final limits appearing in the permit are based on WLAs for Kaiser Aluminum rather than Inland Empire Paper, as follows:

"The Waste Load Allocations for ammonia, total phosphorus, and CBOD are 9.0, 3.21, and 462.7 lbs/day seasonal average from March to October, respectively (0.07, 0.025, and 3.6 mg/L, respectively, at a discharge flow of 15.4 mgd). The final WQBELs are shown below:

FINAL WATER QUALITY BASED EFFLUENT LIMITATIONS: OUTFALL # 001 March through October	
Parameter	**Season Average**
Ammonia, lbs/day	9.0
Total Phosphorus, lbs/day	3.21
CBOD, lbs/day	462.7

EPA-1 The final limits must be based on TMDL WLAs for Inland Empire Paper, as follows:

"The Waste Load Allocations for ammonia, total phosphorus, and CBOD are 24.29, 1.23, and 123.2 lbs/day seasonal average from March to October, respectively (0.71, 0.036, and 3.6 mg/L, respectively, at a discharge flow of 4.1 mgd). The final WQBELs are shown below:

FINAL WATER QUALITY BASED EFFLUENT LIMITATIONS: OUTFALL # 001 March through October	
Parameter	**Season Average**
Ammonia, lbs/day	24.29
Total Phosphorus, lbs/day	1.23
CBOD, lbs/day	123.2

Inland Empire Paper Company #WA-000082-5 and Kaiser Aluminum Fabricated Products LLC #WA-000089-2

EPA-2 Both permits include typographical errors in Condition S5, Footnote a, on Page 15 of the Inland Empire Paper permit and Page 16 of the Kaiser Aluminum permit. Footnote a in each permit says, "The report shall also include an assessment on the progress of meeting the final **waste** quality based effluent limits (WQBELs) through the combination of treatment technology and delta elimination." The condition should say "…**water** quality based effluent limits..."

General comment

EPA-3 EPA recommends that the permits use consistent language regarding offsets or delta management. The industrial permits refer to "delta elimination" or "delta management" whereas the municipal permits refer to "offsets." "Offset" is the term that's used in the Washington water quality standards.

Page 2 of 3

EPA-1. Ecology inadvertently placed the incorrect final water quality based permit limits for total phosphorus, CBOD, and ammonia. Ecology corrected this mistake by mailing a revised section S5 to the Permittee, affected agencies, and interested parties October 8, 2010.

EPA-2. Ecology has corrected these errors in the final permit.

EPA-3. In this permit, Ecology wished to remain consistent with the Foundational Concepts document. This document referred to 'delta' as the gap between the level technology would achieve and the final water quality based effluent limit (WQBEL). 'Delta elimination' would include any measures that eliminate the delta, allowing the facility to meet their final WQBEL.

EPA would like to acknowledge the hard work over the past few years by your WQ Permit Unit staff in reaching this milestone. We appreciate the efforts to work collaboratively with EPA staff on earlier versions of these permits, and we look forward to final permit issuance. If you have any questions regarding these comments, please contact Lisa Olson at (206) 553-0176 or Brian Nickel at (206) 553-6251.

Sincerely,

Michael J. Lidgard, Manager
NPDES Permits Unit

cc: Kelly Susewind, Water Quality Program Manager, Ecology, Olympia
Virginia Darrell, WQ Permit Unit Supervisor, Ecology, Eastern Regional Office
Richard Koch, WQ Permit Manager, Ecology, Eastern Regional Office
Pat Hallinan, WQ Permit Manager, Ecology, Eastern Regional Office

COMMENTS TO NPDES WA-0000825, INLAND EMPIRE PAPER	RESPONSES

INLAND EMPIRE
PAPER COMPANY
Papermakers since 1911.

3320 N. ARGONNE
SPOKANE, WASHINGTON 99212-2099

PHONE: 509.924.1911
FAX: 509.927.8461

November 17, 2010

Via E-mail: stra461@ecy.wa.gov

Ms. Shara-Li Joy, Water Quality Permit Coordinator
Washington State Department of Ecology
Eastern Regional Office
4601 N. Monroe Street
Spokane, WA 99205-1295

Subject: Inland Empire Paper Company Draft NPDES Permit number WA 000082-5

Dear Ms. Joy:

The following comments are submitted on behalf of Inland Empire Paper Company (IEP) in regard to Draft NPDES Permit number WA 000082-5 (Draft Permit).

Draft NPDES Permit number WA 000082-5:

1. **Summary of Permit Report Submittals, page 4 of 38:** The draft permit requires the addition of the following nine (9) substantial reports:

   - S4. TP, CBOD & Ammonia BMP Plan (1 year after permit issuance)
   - S4. TP, CBOD & Ammonia BMP Plan Update (Annual)
   - S5. Annual Status Report for Total P, CBOD & Ammonia (Annual)
   - S5. Technology Selection Protocol (2 years after permit issuance)
   - S5. Delta Management Plan (2 years after permit issuance)
   - S5. Engineering Report for P Reduction (3 years after permit issuance)
   - S6.A PCB BMP Plan (2 years after permit issuance)
   - S6.A PCB BMP Plan Update (Annual)
   - S6.B Scope of work for PCB Source ID Study (2 years after permit issuance)

   The above reporting requirements result in nineteen (19) additional reports over the permit cycle. These nineteen reports will be in addition to the numerous monthly and annual reports already required under IEP's existing NPDES permit. The reporting requirements are excessive. The additional reporting will require a substantial commitment of resources and costs without any meaningful benefit to public health and the environment.

IE-1

IE-1. Ecology disagrees. Ecology believes the reporting requirements are appropriate considering the important nature of the receiving waters, the Spokane River and Lake Spokane.

COMMENTS TO NPDES WA-0000825, INLAND EMPIRE PAPER	RESPONSES
Ms. Shara-Li Joy Page 2 November 17, 2010 **IE-2** WAC 173-220-210, *Monitoring, recording and reporting* states: "Any discharge authorized by a permit may be subject to such monitoring requirements as may be *reasonably* required by the department." The significant amount of reporting associated with the draft permit is not *reasonable*. Washington State Department of Ecology (Ecology) has the discretion to consider reduced reporting requirements based on past performance and cost considerations. **IE-3** Furthermore, the requirement for permit report submittals in IEP's draft NPDES permit are not consistent with draft permits concurrently issued for the other publicly owned treatment works (POTW's) resulting from the DO TMDL for the Spokane River. These POTW permits do not include report submittals for any of the S4, S5, S6 and S9 requirements in IEP's draft permit. The reporting requirements should be consistent for all permits that are concurrently being issued as a result of the DO TMDL. IEP requests that Ecology reconsider the necessity of existing and proposed reports and attempt to either reduce or streamline the number of required reports. The excessive amount of requested reporting requirements, scheduling conflicts, redundant reporting and unnecessary overlap of reports is illustrated in the attached "NPDES Permit Report Submittals Schedule." IEP has provided several examples below where reporting can be reduced, eliminated, or condensed: **IE-4** ➢ The first submittal date for the S4. Total Phosphorus, CBOD and Ammonia BMP Plan Update of March 31, 2012, is incorrect. With the submittal schedule proposed within the permit, the Annual BMP Plan Update would be due at the same time as or immediately following the BMP Plan submittal. **IE-5** ➢ The first submittal date for the S5. Annual Status Report for Total P, CBOD & Ammonia of February 1, 2011 is incorrect. It will not be possible to provide an annual status report on treatment technology and delta elimination plans at the beginning of the permit cycle. **IE-6** ➢ The S4. TP, CBOD & Ammonia BMP Plan Update and the S5. Annual Status Report for Total P, CBOD & Ammonia appear to be redundant and unreasonable. IEP suggests that these two reports be consolidated into a single BMP Plan and Status Update report. **IE-7** ➢ During the first permit cycle, the annual updates for the S4. TP, CBOD and Ammonia BMP Plan and Status Report are too frequent, redundant and will be covered by other reports throughout the permit cycle. The Delta Elimination Plan, Technology Selection Protocol and Treatment Engineering Report required during the 3rd, 4th and 5th year of the permit cycle will provide a summary of the TP, CBOD and Ammonia reduction efforts. To have two additional annual updates providing the same information is excessive and unreasonable. IEP suggests that these updates be consolidated into a single report submitted once at the end of the first permit cycle. **IE-8** ➢ The compliance dates for the S5. Technology Selection Protocol, Delta Elimination Plan and Engineering Report for Treatment Technology are inconsistent with the requirements of the TMDL, Managed Implementation Plan and Foundational Concepts documents, and compliance schedules provided by Ecology (see Comment number 13 below). All three plans are interdependent. Sufficient time will be required to complete the evaluation of	IE-2. Ecology believes the monitoring, recording and reporting requirements are reasonable and necessary. See response to comment IE-1. IE-3. Ecology believes this permit complies with all applicable requirements of State and Federal laws. IE-4. Comment noted. Ecology has changed the submittal date for the first BMP plan update to one year after the first BMP plan due date. IE-5. Comment noted. The final permit contains the first annual status report one year after the effective date of the issued permit. See also response to comment IE-7. IE-6. Ecology wishes to separate the actions taken to comply with the final water quality based effluent limits from the best management practices employed for maintaining/reducing pollutant effluent concentrations. Ecology has changed the submittal updates to the same calendar date (November 1st). IE-7. Ecology based the annual status reports for TP, CBOD, and ammonia on compliance schedule requirements in 40 CFR 122.47. This rule requires interim requirements and the dates for their achievement for compliance schedules running longer than one year. Further, the rule states that if the time necessary to complete any interim requirement is more than one year and cannot be broken into stages for completion, the permit shall specific interim dates for the submission of report of progress toward completion of the interim requirements. One report at the end of the permit cycle fails to meet the annual reporting requirements as specified by the federal rules. Ecology has changed the submittal updates (annual status reports and interim requirements of technology selection protocol, delta elimination plan, engineering report) to the same calendar date of November 1st. -continued on next page-

COMMENTS TO NPDES WA-0000825, INLAND EMPIRE PAPER	RESPONSES
Ms. Shara-Li Joy Page 2 November 17, 2010	-continued from previous page-
IE-2 WAC 173-220-210, *Monitoring, recording and reporting* states: "Any discharge authorized by a permit may be subject to such monitoring requirements as may be *reasonably* required by the department." The significant amount of reporting associated with the draft permit is not *reasonable*. Washington State Department of Ecology (Ecology) has the discretion to consider reduced reporting requirements based on past performance and cost considerations.	IE-8. Ecology believes the compliance schedule is consistent with the requirements of the TMDL, managed implementation plan, and Foundational Concepts. The Foundational Concepts outlines target pursuit actions for permittees which includes a technology selection protocol, delta elimination plan, and engineering report. Further, the Foundational Concepts also lists elements included in each 5 year permit cycle, over the twenty year managed implementation plan. For the first 5 year permit cycle, enforceable terms included obligations "to start, continue, and/or complete the target pursuit actions".
IE-3 Furthermore, the requirement for permit report submittals in IEP's draft NPDES permit are not consistent with draft permits concurrently issued for the other publicly owned treatment works (POTW's) resulting from the DO TMDL for the Spokane River. These POTW permits do not include report submittals for any of the S4, S5, S6 and S9 requirements in IEP's draft permit. The reporting requirements should be consistent for all permits that are concurrently being issued as a result of the DO TMDL.	Attachment A of the Foundation Concepts includes a more exact timeframe for the planning, designing, and construction of phosphorus removal technology for the Permittee. The Appendix gives a completion date for the construction of this treatment by the end of the first permit cycle (5 years). This matches the requirement for the treatment technology installation in the draft permit.
IEP requests that Ecology reconsider the necessity of existing and proposed reports and attempt to either reduce or streamline the number of required reports. The excessive amount of requested reporting requirements, scheduling conflicts, redundant reporting and unnecessary overlap of reports is illustrated in the attached "NPDES Permit Report Submittals Schedule." IEP has provided several examples below where reporting can be reduced, eliminated, or condensed:	Further, the Foundational Concepts acknowledged that "…each of the existing NPDES permits will be handled somewhat differently due to varying conditions associated with each discharge…". Ecology gave municipalities extra time to install their treatment technologies due to the time necessary for coordinating various funding cycles.
IE-4 ➢ The first submittal date for the S4. Total Phosphorus, CBOD and Ammonia BMP Plan Update of March 31, 2012, is incorrect. With the submittal schedule proposed within the permit, the Annual BMP Plan Update would be due at the same time as or immediately following the BMP Plan submittal.	However, in order to allow the Permittee time necessary to evaluate potential new technologies, Ecology has lengthened the compliance schedule in the final permit. The final permit requires submission of the delta elimination plan and technology selection protocol in November, 2015, and the engineering report for treatment technology in November, 2016. These dates are two years later than Ecology proposed in the draft permit. Likewise, the final permit requires the installation and operation of the treatment technology by November, 2018, also two years later than in the proposed permit. The installation and operation of the treatment technology in 2018 coincides with that required in the City of Spokane's recently issued NPDES permit.
IE-5 ➢ The first submittal date for the S5. Annual Status Report for Total P, CBOD & Ammonia of February 1, 2011 is incorrect. It will not be possible to provide an annual status report on treatment technology and delta elimination plans at the beginning of the permit cycle.	
IE-6 ➢ The S4. TP, CBOD & Ammonia BMP Plan Update and the S5. Annual Status Report for Total P, CBOD & Ammonia appear to be redundant and unreasonable. IEP suggests that these two reports be consolidated into a single BMP Plan and Status Update report.	
IE-7 ➢ During the first permit cycle, the annual updates for the S4. TP, CBOD and Ammonia BMP Plan and Status Report are too frequent, redundant and will be covered by other reports throughout the permit cycle. The Delta Elimination Plan, Technology Selection Protocol and Treatment Engineering Report required during the 3rd, 4th and 5th year of the permit cycle will provide a summary of the TP, CBOD and Ammonia reduction efforts. To have two additional annual updates providing the same information is excessive and unreasonable. IEP suggests that these updates be consolidated into a single report submitted once at the end of the first permit cycle.	
IE-8 ➢ The compliance dates for the S5. Technology Selection Protocol, Delta Elimination Plan and Engineering Report for Treatment Technology are inconsistent with the requirements of the TMDL, Managed Implementation Plan and Foundational Concepts documents, and compliance schedules provided by Ecology (see Comment number 13 below). All three plans are interdependent. Sufficient time will be required to complete the evaluation of	

COMMENTS TO NPDES WA-0000825, INLAND EMPIRE PAPER	RESPONSES
Ms. Shara-Li Joy Page 3 November 17, 2010 **IE-8 (con'd)** potential technologies, develop the selected technology for commercial application, provide an engineering design for full-scale application, develop a final engineering report, construct the selected technology, and optimize operation. Considering the substantial capital cost investment and the critical nature of the equipment selection to meet the final effluent limitations, sufficient time must be allowed to complete this process in an appropriate and optimum manner. Based on the above and Comment number 13 below, the submittal schedule for the subject reports should be as follows: *Delta Elimination Plan* — *Three (3) years after permit effective date* *Technology Selection Protocol* — *One (1) year after Ecology approval of the Delta Elimination Plan* *Engineering Report for Treatment Technology* — *One (1) year after Ecology approval of the Technology Selection Protocol* **IE-9** ➢ The first submittal date for the S6.A PCB BMP Plan Update of March 31, 2013 is incorrect. With the submittal schedule proposed within the permit, the annual PCB BMP Plan Update would be due at the same time as or immediately following the BMP Plan submittal. **IE-10** ➢ Per Comment number 5 below, the first submittal date for both the PCB BMP Plan (S6.A) and Scope of Work for PCB Source Identification Study (S6.B) is "*Two (2) years after permit issuance date*." Both of these plans are interdependent. It is not possible to develop the PCB BMP Plan without first completing the PCB Source Identification Study. IEP suggests that the First Submittal Date for the Scope of Work for PCB Source Identification Study (S6.B) be "*Two (2) years after permit issuance date*" and that the First Submittal Date for the PCB BMP Plan (S6.A) be "*Four (4) years after permit issuance date*." At least two years will be required to perform the PCB Source Identification Study, evaluate the results, and develop a subsequent PCB BMP Plan. **IE-11** ➢ During the first permit cycle, the annual updates for the PCB BMP Plan are not consistent with the development of the PCB Source ID Study and BMP Plan (see above comment and Comment number 5 below). IEP suggests that this update be submitted once at the end of the first permit cycle. **IE-12** ➢ Many of the reports are due on the same date or within the same year. IEP suggests staggering the submittal date of the reports to allow for a more efficient allocation of resources. **IE-13** ➢ IEP suggests using relevant terms for the report submittal dates in lieu of physical dates, since the release date of the final permit has not yet been established. Terms such as "after permit effective date" or "after permit issuance date" are more appropriate than actual dates.	IE-9. Comment noted. Ecology has changed the submittal date for the first PCB BMP plan update to one year after the first PCB BMP plan due date. See also response to comment IE-10 and IE-11 below. IE-10. Comment noted. Ecology originally envisioned the PCB BMP Plan and PCB Source Identification Study as separate items. Ecology expected minimal content of the first PCB BMP Plan submittal (within two years after permit issuance), because most of the required items (S6.A.2. through S6.A.6) would not have been developed, completed, or evaluated. As time progressed, the BMP plan would have included more of the items listed under S6.A. Ecology agrees that a more thorough and complete BMP plan would include results from the PCB Source Identification Study. Therefore, Ecology has changed the first PCB plan submittal from two years to four years after the permit issuance date. Ecology has also listed the PCB Source Identification Study as the first item under S6. (Section A) and the BMP Plan as the second item (Section B). IE-11. See response to comment IE-10. With the revised PCB BMP Plan due date, the first BMP plan update will occur at the end of the first permit cycle. IE-12. Comment noted. The permit requires most submittals in whole years after the permit issuance date. The Permittee, at their discretion, can always prepare and submit the required reports earlier than the due dates given in the permit. This may allow for a more efficient allocation of resources. IE-13. For ease of tracking submittals, the final permit includes specific dates for report submittals, rather than using the terms 'after permit effective date' and 'after permit issuance date'.

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  IE-14 ➢ Based on the above suggestions and Comment numbers 2, 4, 5 and 13 below, IEP has attached a "Revised NPDES Permit Report Submittals Schedule" that corrects the scheduling errors, eliminates redundancy, sequences report submittals and is consistent with the TMDL. The revised submittals schedule results in a more efficient use of time and reduces the total number of new reports from nineteen down to nine. **IE-15** 2. **S4. Total Phosphorus, CBOD, and Ammonia BMP Plan Update, page 4 of 38:** As discussed in Comment number 1 above, IEP suggests that this report be consolidated with the S5. Annual Status Report for TP, CBOD and Ammonia and submitted once at the end of the permit cycle. **IE-16** 3. **S5. Delta Management Plan, page 4 of 38:** "Delta Management Plan" should be "Delta Elimination Plan" to be consistent with language used throughout the NPDES permit, Fact Sheet and the DO TMDL. **IE-17** 4. **S6.A PCB BMP Plan Update, page 4 of 38:** As discussed in Comment number 1 above, IEP suggests that this report be submitted once at the end of the permit cycle. **IE-18** 5. **S6.A PCB BMP Plan and S6.B Scope of Work for PCB Source Identification Study, page 4 of 38:** The first submittal date for both the PCB BMP Plan (S6.A) and Scope of Work for PCB Source Identification Study (S6.B) is "*Two (2) years after permit issuance date*." Both of these plans are interdependent. It is not possible to develop the PCB BMP Plan without first completing the PCB Source Identification Study. IEP suggests that the First Submittal Date for the Scope of Work for PCB Source Identification Study (S6.B) be "*Two (2) years after permit issuance date*" and that the First Submittal Date for the PCB BMP Plan (S6.A) be "*Four (4) years after permit issuance date*." At least two years will be required to perform the PCB Source Identification Study, evaluate the results, and develop a subsequent PCB BMP Plan. **IE-19** 6. **S13.A Chronic Toxicity Characterization Data, page 5 of 38**: requires IEP to conduct chronic toxicity testing on the final effluent within 120 days of the permit effective date. WAC 172-205-030(5)(b) states that "If an effluent characterization for whole effluent toxicity which meets the requirements of WAC 173-205-050(1) has been conducted in a previous permit, permit application, or administrative order, then subsequent permits shall not contain a requirement for effluent characterization provided that all determinations required by this chapter can be made to the department's satisfaction and unless WAC 173-205-060 applies. Effluent characterization for chronic toxicity was performed as a requirement of IEP's current permit term, passing all tests with 100% survivability in 100% final effluent. Furthermore, IEP performed acute toxicity testing on a quarterly basis under the prior permit and demonstrated 100% survivability in 100% final effluent for all tests. No substantial changes in the IEP water quality treatment processes have occurred since the most recent toxicity tests that would cause or increase effluent toxicity, therefore subsequent permits should not contain a requirement for effluent characterization in accordance with WAC 172-205-030(5)(b). IEP requests that Ecology eliminate the requirements for chronic toxicity characterization as defined under S13.A.	IE-14. See responses to comments IE-7, IE-8, and IE-10. IE-15. See response to comment IE-7. IE-16. Ecology has changed the Delta Management Plan to Delta Elimination Plan throughout the final permit. IE-17. See response to comment IE-10. IE-18. See response to comment IE-10. IE-19. As explained in the fact sheet, Ecology determined the Permittee must repeat the WET characterization for both acute and chronic toxicity because the average flow volume appears to have changed by ten percent or more due to increases in production, see WAC 173-205-060(c). In addition to the increase in flow, the Permittee has modernized the mechanical pulp production at the facility and added additional effluent treatment units. Without another characterization, Ecology cannot determine if these changes have resulted in an increase in effluent toxicity, see WAC 173-205-060(a).

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Ms. Shara-Li Joy Page 5 November 17, 2010 7. **S1. Discharge Limitations, Interim Limits, page 7 of 38:** Inland Empire Paper Company and Kaiser Aluminum Fabricated Products, LLC currently operate under the "Spokane River Phosphorus Management Plan" for Total Phosphorus. The Fact Sheet associated with this permit references the "Spokane River Phosphorus Management Plan" and the fact that IEP and Kaiser currently operate under this plan for seasonal limitations of phosphorus. The interim permit limits specified for phosphorus for the next two NPDES Permit cycles are numeric effluent limits based on best management practices (BMPs). There have been no changes to the development of interim limits for this draft permit that would preclude compliance as is currently performed under the "Spokane River Phosphorus Management Plan". IEP requests that the following language from IEP's existing permit be incorporated as footnote "e" under the "Total Phosphorus (as P), lbs/day" parameter of the interim limits specified for the "Effluent Limitations: Outfall number 001 March through October": **IE-20** [e]*Spokane River Phosphorus Management Plan* • *The daily average aggregate discharge for total phosphorus (as P) shall not exceed 26.0 lbs/day during the time period from March 1 to October 31 for Inland Empire Paper Company and Kaiser Aluminum Fabricated Products, LLC.* • *The daily average discharge for total phosphorus (as P) shall not exceed 24.7 lbs/day during the time period from March 1 to October 31 for Inland Empire Paper Company.* • *The Permittee will not be considered in violation of the daily average discharge limit contained in condition S1.A.3.b. unless the daily average aggregate discharge limit contained in condition S1.A.3.a is also exceeded for the same reporting period.* The above language modification should similarly be incorporated into Kaiser Aluminum Fabricated Products, LLC NPDES permit. If Ecology refuses to incorporate the existing compliance language, it should provide an explanation as to the rationale for removing this provision in the draft permit. 8. **S1.A.1. Discharge Limitations, Footnote "d", page 8 of 38:** states "[d]*See Special Condition* S5 for the Waste Load Allocations, and Schedule of Compliance, and Final Water Quality Based *Effluent Limitations for total phosphorus, CBOD, and ammonia.*" The approved *Spokane River / Lake Spokane Dissolved Oxygen Water Quality Improvement Report* at page 51 under the Margin of Safety specifically states "*All phosphorus is assumed to be bioavailable*". Furthermore, at page 64 under the Managed Implementation Plan, the report states "*NPDES permit holders may seek to prove to Ecology that a certain stable fraction of their phosphorus discharge is not bio-available in the river environment for a time sufficient to consider it not bio-available and not a nutrient source. If Ecology agrees, the pounds of phosphorus that are not bio-available will be recognized as contributing toward achieving the total phosphorus waste load allocation*".	IE-20. Ecology based the monthly average interim limit for total phosphorus on past monitoring results in combination with the Permittee's previous individual bubble limit of 24.7 pounds per day. During the life of the previous permit, the Permittee has met their individual permit limit during the critical season running from June through October. Likewise, Kaiser Aluminum Fabricated Products has likewise met their individual monthly average limit of 11.8 pounds per day during the same time period. The facilities have never used the aggregate bubble limit to comply with the previous water quality based effluent limits for total phosphorus. Based on best professional judgment, the interim limit for total phosphorus is a performance based effluent limit. This performance based limit replaces the less stringent water quality based bubble limit shared between the two facilities.

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  IE-21 The permit must be consistent with the assumptions and requirements of the TMDL, 40 C.F.R. § 122.44. Since the TMDL margin of safety assumes all effluent phosphorus to be bioavailable, all references to "Total Phosphorus" waste load allocations in the NPDES permit relative to the DO TMDL must be revised to "Bioavailable Phosphorus". This is an important distinction and reflects the provisions of the Managed Implementation Plan that allow a credit towards achieving a WLA based on the non-bioavailable fraction of phosphorus in IEP's effluent. IEP understands that the TMDL will continue to be implemented in its NPDES Permit in accordance with the Managed Implementation Plan and specifically the quoted provision that the "*pounds of phosphorus that are not bio-available will be recognized as contributing toward achieving the total waste load allocation*." IEP requests that Ecology affirm in its response to comments that this provision remains applicable to IEP and available to meet its final effluent limitations for phosphorus. **IE-22** 9. **Method Detection Limit for Metals, Footnote (1), Page 9 of 38:** The permit fails to specify the Test Method, Method Detection Limit (MDL) and the Quantitative Limit (QL) for Total Zinc. IEP requests that this information be included in the permit as Method 200.8 (40 CFR Part 136) with an MDL of 1.8 µg/L and a QL of 5.65 µg/L. **IE-23** 10. **Monitoring Schedule, page 10 of 38:** Monitoring for Zinc, Lead, Cadmium, Hardness, $CBOD_5$, and Total PCB's are in addition to the monitoring requirements of IEP's current NPDES permit. The additional burden of testing coupled with the significant reporting requirements discussed in Comment number 1 above will result in substantial resource requirements and added costs. Ecology has the discretion to consider reduced reporting and monitoring requirements based on past performance and cost considerations. IEP has historically maintained an exemplary compliance record and has not made significant material changes to its process. IEP requests that Ecology reconsider the monitoring requirements and/or testing frequency to minimize the resource and cost impacts of the draft NPDES permit. IEP has provided several examples below where monitoring can be reduced, eliminated, or condensed: **IE-24** ➢ The permit requires low level PCB testing, once per quarter. This requirement will also apply to numerous streams in accordance with the required PCB Source Identification Study. The cost associated with low-level testing methods for PCB's is exorbitant (approximately $1,300/each). IEP's process does not change significantly to warrant this frequency of testing. IEP requests that the testing frequency for PCB's in the final effluent be reduced to once/year. **IE-25** ➢ The monitoring schedule requires testing for $CBOD_5$ once per month in addition to BOD_5 testing five times per week. Historical data collection of both parameters has shown that there is no discernable difference between $CBOD_5$ and BOD_5 in IEP's pulp and paper mill effluent. Discrepancy between $CBOD_5$ and BOD_5 primarily occurs in municipal type wastewater effluents where nitrification provides misleading results during the test procedure. IEP requests that Ecology select either $CBOD_5$ or BOD_5 as the accepted test method from this point forward, but not both. Performing both test methods in the case of	IE-21. The TMDL expresses WLAs for phosphorus as 'total phosphorus'. When bioavailability determinations are made, Ecology will likely need to modify the TMDL to incorporate these determinations. At this point, the appropriate reference is the permit is to 'total phosphorus'. IE-22. Zinc concentrations reported in the permit application range up to 300 µg/L. At this level, most, if not all, 40 CFR Part 136 methods will give an adequate quantification of zinc levels in the effluent. Therefore, the final permit does not specify an exact method for zinc testing. IE-23. Comment noted. See responses below. IE-24. Based on other comments received on the PCB requirements of this permit, Ecology has increase PCB monitoring to once every two months for the first eighteen months after permit issuance. This increased monitoring frequency will allow Ecology to set a performance based PCB effluent limit. After the initial 18 month period, the final permit reduces the monitoring frequency to once per quarter. IE-25. Ecology believes the once per month testing for CBOD will provide ongoing confirmation on the relationship between CBOD and BOD. Further, Ecology does not expect that this once per month testing, performed in house, will be 'unnecessarily costly'. Ecology has set the BOD performance based limit over the critical period based on BOD monitoring data. Ecology has chosen BOD as the parameter for interim compliance monitoring since the Permittee has not been routinely monitoring or reporting CBOD concentrations. Ecology anticipates at the end of the compliance schedule, the permittee will only have to test for CBOD during the critical season, not BOD.

IE-25 (con'd)

IEP is redundant and unnecessarily costly. If future compliance will be based on $CBOD_5$ due to the DO TMDL, then Ecology should select $CBOD_5$ as the compliance requirement from this point forward. BMP Plans (S4) and Status Reports (S5) are also based on $CBOD_5$, so it would also make sense to base these reports on data that is collected five times per week rather than once per month.

IE-26

11. **S4. Total Phosphorus, CBOD, and Ammonia Best Management Practices (BMP) Plan, pages 14 and 15 of 38:** As stated in Comment number 8 above, the permit must be consistent with the assumptions in the TMDL that all effluent phosphorus is bioavailable. Therefore, all references to "Total Phosphorus" waste load allocations in the NPDES permit relative to the DO TMDL must be revised to "Bioavailable Phosphorus"

In order to assure that the NPDES permit is consistent with the DO TMDL assumptions, IEP suggests that Section S4 be revised as follows:

S4. BIOAVAILABLE PHOSPHORUS, CBOD, AND AMMONIA BEST MANAGEMENT PRACTICES (BMP) PLAN

The goal of this BMP plan is to maintain effluent concentrations of bioavailable phosphorus, CBOD, and ammonia at or below current discharge levels.

Within 12 months of the effective date of this permit, the Permittee shall develop a BMP plan and submit it to the Department for review and approval. The objective of this plan is to identify pollution prevention and wastewater reduction opportunities for these three parameters. The plan shall include the following:

IE-27

1. A list of members of a cross-functional team responsible for developing the BMP plan. The list shall include the name of a designated team leader.

2. A description of current and past BMPs and their effectiveness.

3. Identification of technical/economical evaluation of new BMPs. BMPs should include: substitution of materials; reformulation or redesign of products; modification of equipment, facilities, technology, processes, and procedures; and improvement in management, inventory control, materials handling or general operational phases of the facility.

4. A schedule for implementation of economically feasible BMPs.

5. Methods used for measuring progress towards the BMP goal and updating the BMP plan.

6. Results from testing of any waste streams (not already required under Special Condition S3. of this permit) for bioavailable phosphorus, CBOD, and ammonia taken in support of the BMP plan.

IE-26. The permit must reference 'total phosphorus' as does the WLA from the TMDL. See response to comment IE-21.

IE-27. See response to comment IE-21.

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  IE-27 (con'd) *Thereafter, the Permittee shall submit a status update report to the Department by March 31 of the last year of each permit cycle. The status update report shall include: a) all BMP plan monitoring results for the permit cycle; b) a summary of effectiveness of all BMPs implemented to meet the BMP plan goal; and c) any updates to the BMP plan.* *This permit may be modified, or revoked and reissued, to revise or remove the requirements of this Section based on information collected under this Section.* 12. **S5. Schedule of Compliance for Total Phosphorus, CBOD, and Ammonia, page 15 of 38:** **IE-28** As stated in Comments numbers 8 and number 11 above, the permit must be consistent with the TMDL, which assumes all effluent phosphorus to be bioavailable, therefore all references to "Total Phosphorus" waste load allocations in the NPDES permit relative to the DO TMDL must be revised to "Bioavailable Phosphorus (BAP)". 13. **S5. Schedule of Compliance for Total Phosphorus, CBOD, and Ammonia, page 15 of 38:** **IE-29** As discussed in Comment number 1 above, the TP, CBOD & Ammonia BMP Plan Update and the Annual Status Report for Total P, CBOD & Ammonia appear to be redundant and too frequent. IEP suggests that these two reports be consolidated into a single BMP Plan and Status Update report to be submitted once at the end of the permit cycle or at the beginning of the following permit cycle. **IE-30** As stated in Comments number 8 and number 11 above, the permit must be consistent with the TMDL, which assumes all effluent phosphorus to be bioavailable, therefore all references to "Total Phosphorus" waste load allocations in the NPDES permit relative to the DO TMDL must be revised to "Bioavailable Phosphorus (BAP)". **IE-31** The compliance dates for the specified Target Pursuit Actions are inconsistent with the requirements of the TMDL, Managed Implementation Plan and Foundational Concepts documents, recent compliance schedules provided by Ecology, and the draft municipal wastewater treatment plant permits being issued as a consequence of the DO TMDL. To date, IEP has performed studies of ten (10) different advanced phosphorus reduction technologies. None of these technologies has demonstrated compliance with the final WQBEL's for Phosphorus, CBOD, and Ammonia. IEP continues to study promising technologies that have not yet achieved commercial scale operation. Sufficient time will be required to complete the evaluation of potential technologies, develop the selected technology for commercial application, provide an engineering design for full-scale application, develop a final engineering report, construct the selected technology, and optimize operation. Considering the substantial capital cost investment and the critical nature of the equipment selection to meet the final effluent limitations, sufficient time must be allowed to complete this process in an appropriate and optimum manner. Since Ecology is requiring that the final WQBEL's must be met ten (10) years after permit effective date, the schedule must be structured to utilize this time period most effectively. **IE-32**	IE-28. See response to comment IE-21. IE-29. See response to comment IE-7. IE-30. See response to comment IE-21. IE-31. See response to comment IE-8. IE-32. Comment noted. Ecology believes the original compliance schedule is consistent with the requirements of the TMDL, managed implementation plan and Foundational Concepts. However, in order to allow the Permittee time to evaluate new treatment technologies, Ecology has lengthened the compliance schedule in the final permit. See response to comment IE-8.

IE-33

Furthermore, Ecology should provide coordinated approval of the Delta Elimination Plan, Technology Selection Protocol and Engineering Report. All three plans are interdependent. Ecology is not likely to have any basis for approving the Engineering Report unless it has approved the Delta Elimination Plan. It is well known and recognized by Ecology staff and management that technology does not exist for IEP to achieve the stringent WLA's that are based on presumed treatment capabilities for publicly owned treatment plants. Ecology should accordingly understand that the Engineering Report will rely on the Delta Elimination Plan. An Engineering Report under WAC 173-240-130(2)(q) must include a "statement expressing sound engineering justification through the use of pilot plant data, results from other similar installations, or scientific evidence from the literature, or both, **that the effluent from the proposed facility will meet applicable permit effluent limitations or pretreatment standards or both**." IEP is not going to be able to submit an Engineering Report that complies with this requirement unless there is an approved Delta Elimination Plan.

IE-34

The draft permits for the municipal dischargers provide compliance schedules that are consistent with the TMDL, Managed Implementation Plan and Foundational Concepts documents. Ecology must provide IEP with a compliance schedule that is consistent with the municipal dischargers, DO TMDL, Managed Implementation Plan and Foundational Concepts documents.

IE-35

Based on the above, IEP requests that the compliance schedule be revised for meeting the Target Pursuit Actions as follows:

S5. Schedule of Compliance for Bioavailable Phosphorus, CBOD, and Ammonia

Target Pursuit Action	***Compliance Date***
BMP Plan and Status Update Report[a]	*February 1st of the last year of the permit cycle*
Delta Elimination Plan[b]	*Three (3) years after permit effective date*
Technology Selection Protocol for Treatment Technology[c]	*One (1) year after Ecology approval of the Delta Elimination Plan*
Engineering Report for Treatment Technology[d]	*One (1) year after Ecology approval of the Technology Selection Protocol*
Phosphorus Treatment Technology	*Must be installed and operational within three (3) years after Ecology approval of the Engineering Report[e]*

14. **S5. Schedule of Compliance for Total Phosphorus, CBOD, and Ammonia, page 15 of 38:**

Target Pursuit Action	***Compliance Date***
Meet Final WQ based Effluent Limits	*Ten (10) years after permit effective date*

In 2009, the Washington State Legislature unanimously enacted Senate Bill 6036, codified as RCW 90.48.605, that authorizes compliance schedules in excess of ten years for discharge permits that implement allocations contained in a TMDL. This legislation was enacted specifically to address situations such as the Lake Spokane DO TMDL where a compliance schedule is appropriate and a permittee is unable to meet its waste load allocation solely by controlling and treating its effluent. There is no question that a compliance schedule is appropriate and Ecology

IE-33. The final permit requires the Delta Elimination plan within four years after the permit effective date, at the same time as the Technology Selection Protocol and one year ahead of the Engineering Report. Ecology expects to have sufficient detail regarding Delta Elimination options so that it can approve the Engineering Report.

IE-34. See response to comment IE-8.

IE-35. In order to allow the Permittee time to evaluate new treatment technologies, Ecology has lengthened the compliance schedule in the final permit. See response to comment IE-8.

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  has already acknowledged in the dispute resolution process that the treatment technology is not available that would enable IEP to achieve compliance with its waste load allocation. A compliance schedule in excess of ten years is therefore appropriate under RCW 90.48.605. Furthermore, "*the Foundational Concepts for the DO TMDL spreads this approach over a twenty year managed implementation plan*" (reference page 12 of the Permit Fact Sheet). The necessity of a twenty year compliance plan to meet the goals of the DO TMDL is supported by the lack of certainty regarding Ecology approved delta elimination plans and the need for long-term non-point source reductions. **IE-36** IEP requests that Ecology provide a compliance schedule of twenty (20) years to conform to the requirements of Federal (40CFR§1313(a)(1)) and Washington State law (RCW 90.48.605) and the Foundational Concepts for the DO TMDL. At a minimum, the permit should acknowledge that **IE-37** Ecology has an affirmative obligation to amend the state water quality standards to provide a longer compliance schedule in the circumstances of this permit and that the compliance schedule may be lawfully extended by permit modification or renewal consistent with RCW 90.48.605. The **IE-38** fact sheet clearly states this obligation on page 14: "*State and Federal law require NPDES permit contain water quality based effluent limits for all applicable parameters, and State law limits compliance schedules necessary to meet water quality based effluent limits to no longer than 10 years (unless a longer compliance schedule becomes available under RCW 90.48.605).*" The permit language relative to the ten year compliance schedule to meet the water quality based effluent limits should be consistent with the language provided in the fact sheet. **IE-39** Ecology should explain whether it intends to include the opportunity for a 20 year compliance schedule pursuant to RCW 90.48.605 in the upcoming triennial review of the state water quality standards. Ecology should also disclose whether IEP will be eligible for a 20 year compliance **IE-40** schedule in future permit cycles if it otherwise qualifies under the statute or whether the limitation on a 10 year compliance schedule in the current permit will preclude any otherwise lawful extension of the compliance schedule under the statute. **IE-41** IEP requests that the compliance date for meeting final WQ based effluent limits be revised as follows (consistent with the language from the permit fact sheet, page 14 of 47): | ***Target Pursuit Action***	***Compliance Date***
Meet Final WQ based Effluent Limits	*Ten (10) years after permit effective date (unless a longer compliance schedule becomes available under RCW 90.48.605)* | **15. S5. Schedule of Compliance for Total Phosphorus, CBOD, and Ammonia, Footnote (a), page 15 of 38:** **IE-42** As discussed in Comments number 1 and number 13 above, the TP, CBOD & Ammonia BMP Plan Update and the Annual Status Report for Total P, CBOD & Ammonia appear to be redundant and too frequent. IEP suggests that these two reports be consolidated into a single BMP Plan and Status Update report to be submitted once at the end of the permit cycle or at the beginning of the following permit cycle.	IE-36. At this time, Ecology must include a compliance schedule consistent with the current Water Quality Standards, which specify a maximum compliance schedule length of 10 years. IE-37. Comment noted. The final permit includes language referencing both RCW 90.48.605 and a compliance schedule in excess of 10 years. IE-38. Comment noted. See response to comment IE-37. IE-39. Comment noted. According to RCW 90.48.605, Ecology must amend the State's Water Quality Standards to authorize compliance schedules in excess of ten years if the department determines that: 1) The permittee is meeting its requirements under the total maximum daily load as soon as possible; 2) The actions proposed in the compliance schedule are sufficient to achieve water quality standards as soon as possible; 3) A compliance schedule is appropriate; and 4) The permittee is not able to meet its waste load allocation solely by controlling and treating its own effluent. IE-40. When incorporated into the Water Quality Standards, Ecology believes modifying the permit to lengthen the compliance schedule, consistent with requirements of RCW 90.48.605, will be lawful. IE-41. Comment noted. Ecology has added this language to the final permit. IE-42. See response to comment IE-7.

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Ms. Shara-Li Joy Page 11 November 17, 2010 16. **S5. Schedule of Compliance for Total Phosphorus, CBOD, and Ammonia, Footnote (b), page 15 of 38:** The DO TMDL Implementation Advisory Committee is currently developing a water quality trading program for the Spokane River watershed. A successful water quality trading program will be essential for attainment of the waste load allocations for NPDES permit holders and achievement of Avista's responsibility. Acknowledgement of this program must be incorporated into the NPDES permits. Furthermore, as discussed in Comment number 7 above, IEP and Kaiser currently operate under the "Spokane River Phosphorus Management Plan" also known as a "bubble" for aggregated discharge of total phosphorus. This industrial phosphorus management plan between IEP and Kaiser is part of the "Spokane River Phosphorus Management Plan" that was adopted in 1989 as a bi-state (Washington and Idaho) effort to reduce phosphorus contributions to the Spokane River. Innovative approaches such as the Spokane River Phosphorus Management Plan will be necessary for the success of the DO TMDL. IEP encourages Ecology to incorporate such measures into the Delta Elimination Plan. For DO TMDL compliance, IEP suggests extending the "bubble" concept to municipal NPDES permit holders in addition to IEP and Kaiser, including Idaho, and broadening the scope to include the other regulated parameters CBOD and ammonia. **IE-43** Based on the above, IEP requests that Footnote (b) be revised as follows: "*Delta elimination plan will include a schedule for other phosphorus, CBOD and ammonia removal actions such as conservation, effluent re-use, source control through support of regional phosphorus, CBOD and ammonia reduction efforts (such as limiting use of fertilizers and dishwasher detergents), water quality trading as determined through the Washington Trading Framework report, supporting regional non-point source control efforts to be established, and maintaining elements of the Spokane River Phosphorus Management Plan by extending the bubble concept to all other dischargers (including Idaho) for bioavailable phosphorous, CBOD and ammonia*." 17. **S5. Schedule of Compliance for Total Phosphorus, CBOD, and Ammonia, Footnote (b), page 16 of 38:** states "*Subject to Ecology approval and public review and comment*" **IE-44** The permit conditions for the Delta Elimination Plan are vague and confusing. The draft permit states that the plan or aspects of the plan are subject to public review and comment. IEP is not aware of any mechanism for public notice and comment on a report or plan required in a NPDES Permit or waste discharge permit. Why is Ecology proposing that one out of fifteen reports and plans (Delta Elimination Plan) is subject to public review and comment and what is the legal basis for this determination? 18. **S5. Schedule of Compliance for Total Phosphorus, CBOD, and Ammonia, Footnote (b), page 15 of 38:** states "*The delta elimination plan may include a demonstration that a certain stable fraction of the phosphorus discharged from the facility is not bio-available in the River environment, is not reactive and is not a nutrient source*." and "*Subject to Ecology approval and public review and comment, and to the extent it is consistent with the assumptions used to develop the DO TMDL, the demonstration that a certain stable fraction of the phosphorus discharged from the facility is not bio-available in the River environment, is not reactive and is not a nutrient source may be recognized as cause to adjust the total phosphorus WQBELs in the second permit cycle*."	IE-43. Ecology has modified Delta Elimination language of the final permit based on this comment, and others received during the public comment period. This revised language references the Trading Framework, as well as, the Bubble Limit concept. IE-44. Ecology wants the Permittee's Delta Elimination options, especially when used to meet final water quality based permit limits, be clear and transparent to the public. Therefore, Ecology plans to public notice these plans for public review.

IE-45

The term "*is not reactive*" is ambiguous, confusing and not appropriate. Total Reactive Phosphorus (TRP) is not a good indicator of bioavailable phosphorus (BAP), as the TRP acid-molybdate chemical assay overestimates the dissolved inorganic phosphate concentration due to phosphates being released from organics by hydrolysis during the analysis.[1] Furthermore, the University of Washington/WERF draft bioavailability study (Bio P Study) conducted on IEP's tertiary treated effluent, found no definitive correlation between TRP and BAP to indicate that TRP could be used as an equivalent measure of BAP – "*After tertiary treatment, the percentage of P which reacted with acid-molybdate declined to 25%, and only 9% was bioavailable.*"[2] This "gold standard" study further concluded that even the %BAP determination is likely an overestimate of the eutrophication potential of IEP's effluent – "*In fact, the %BAP estimate may even be an over-estimate of the true bioavailability of the P in the IEP effluent because the size distribution of the particles in the IEP samples at the end of the algal bioassay experiments was not consistent with the expected size distribution of the algae used in these experiments, nor with the size distribution of particles actually measured for all other effluents tested during this series of experiments.*"

Based on the above, it is very clear that TRP is not a good indicator of the BAP in IEP's effluent. Therefore, IEP requests that "*is not reactive*" be deleted from Footnote (b).

19. **S5. Schedule of Compliance for Total Phosphorus, CBOD, and Ammonia, Footnote (b), page 15 of 38:** states "*Subject to Ecology approval and public review and comment, and to the extent it is consistent with the assumptions used to develop the DO TMDL, the demonstration that a certain stable fraction of the phosphorus discharged from the facility is not bio-available in the River environment, is not reactive and is not a nutrient source may be recognized as cause to adjust the total phosphorus WQBELs in the second permit cycle.*"

As a privately owned business, IEP must have certainty to invest in its future. Ecology has committed to recognizing the reality of BAP throughout the development of the DO TMDL. This commitment was exemplified by Ecology's investment into the"Spokane Regional Wastewater Phosphorus Bio-availability Study" (identified as the "gold standard" study) as a means for providing resolve to the quantification of BAP.[3] Ecology's commitment was further established by the conclusion of its dispute resolution panel:[4]

> *Bioavailability Report*
>
> *Conceptually, not all phosphorus matters.* ***Only that portion that impacts the dissolved oxygen (D.O.) in Lake Spokane will be counted toward each facility's waste load allocation and be put into permits****. There is understandable uncertainty about how the study results will be used when they are available in approximately one year.* ***We think the additional clarity below will help the dischargers, particularly Inland Empire Paper (IEP), understand how***

[1] Chamberlin and Shapiro (1969)
[2] UW Draft Bio-available Phosphorus Result Report (2010)
[3] Quality Assurance Project Plan: Spokane Regional Wastewater Phosphorus Bio-availability Study (2009)
[4] Spokane TMDL Dispute Resolution Panel - Summary of Recommendations (2010)

IE-45. Ecology has deleted the term 'is not reactive' from the final permit.

***that information will be used to develop its permit limits**. Ecology will issue permits to IEP and the city of Spokane in 2010. Those permits will specify that final limits need to be met in 2020. The following will occur in the interim:*

- *The bioavailability study will be completed in December 2010.*
- *The written report describing the findings of the bioavailability study is due in early 2011.*
- ***The report is then available for use in setting permit limits. The WQP should work with IEP and the city of Spokane to determine if a permit modification earlier than 2015 would help provide more certainty**.*

*According to Table 10 of the TMDL Report, final waste load allocations will be re-assessed with each permit cycle. Thus, the permits will be re-issued in 2015 and will incorporate bioavailable phosphorous limits based on the findings of the Phosphorous Bioavailability Report, and waste load allocations will be revised if necessary. **As noted in the bullet above, the WQP, IEP and Spokane may choose to do this prior to the 2015 permit cycle**.*

IE-46

The findings of the Dispute Resolution Panel were adopted by the Director of the Department of Ecology.[5] Based on Ecology's well documented commitment to providing IEP with certainty through consideration of BAP, IEP requests that Footnote (b) be revised in accordance with the Director's approval of the Dispute Resolution Panel's findings as follows:

*Subject to Ecology approval and to the extent it is consistent with the assumptions used to develop the DO TMDL, the demonstration that a certain stable fraction of the phosphorus discharged from the facility is not bio-available in the River environment and is not a nutrient source may be recognized as cause to adjust the total phosphorus WQBELs in the NPDES permit. **The written report describing the findings of the BioP study may be used in setting permit limits during the current permit cycle to provide the discharger with certainty.***

20. **S5. Schedule of Compliance for Total Phosphorus, CBOD, and Ammonia, Footnote (b), page 15 of 38:** states "*The plan, in combination with the pollutant reduction from technology, shall provide reasonable assurance of meeting the Permittee's Waste Load Allocations in ten (10) years.*"

IE-47

As discussed in Comment number 14 above, IEP does not agree with the ten (10) year compliance schedule for meeting the final WQ based effluent limits. IEP requests that Ecology revise the compliance schedule to conform to the requirements of Federal (40CFR§1313(a)(1)) and Washington State law (RCW 90.48.605), the Foundational Concepts for the DO TMDL, and the permit fact sheet (page 14 of 47):

[5] Letter from Ted Sturdevant to Kevin Rasler (May 5, 2010)

IE-46. Comment noted. Ecology has revised the language in the final permit stating that a permit modification based on bioavailability determinations may occur within this permit cycle.

IE-47. See response to comments IE-36 and IE-37.

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Ms. Shara-Li Joy Page 14 November 17, 2010 **IE-47 (con'd)** "*The plan, in combination with the pollutant reduction from technology, shall provide reasonable assurance of meeting the Permittee's Waste Load Allocations in ten (10) years (unless a longer compliance schedule becomes available under RCW 90.48.605).*" 21. **S5. Schedule of Compliance for Total Phosphorus, CBOD, and Ammonia, Footnote (c), page 16 of 38:** states "A comprehensive technology selection protocol for choosing the most effective feasible technology for seasonally removing the applicable pollutant from the effluent. If pilot testing is a part of the protocol, there will be appropriate provisions for quality assurance and control. The protocol will include a preliminary schedule for construction of the treatment technology." In recognition of the unachievable final WLA limits imposed by the DO TMDL, IEP began actively researching and developing innovative and advanced technologies in 2004. To date, IEP has invested over 9 million dollars in: the pilot testing of ten advanced phosphorus reduction technologies; installation of the first large-scale phosphorus removal system on the Spokane River and; maximized $CBOD_5$ removal with the addition of advanced equipment to the existing secondary treatment system. Ecology must recognize IEP's past and present efforts and investments as authorized efforts towards achievement of the DO TMDL. Based on the above, IEP requests that Footnote (c) be revised as follows: **IE-48** "*[c]A comprehensive technology selection protocol for choosing the most effective feasible technology for seasonally removing the applicable pollutant from the effluent. If pilot testing is a part of the protocol, there will be appropriate provisions for quality assurance and control. The protocol will include a preliminary schedule for construction of the treatment technology. Ecology will recognize results from pilot testing efforts and full-scale implementation of any technologies installed prior to this permit.* 22. **S5. Schedule of Compliance for Total Phosphorus, CBOD, and Ammonia, Footnote (d), page 15 of 38:** states **"***The Engineering Report will (if necessary) be accompanied by amendments to the schedule and substance of the target pursuit actions so that in combination with the Engineering Report on expected technology performance, there is reasonable assurance of meeting the final WQBELs in ten (10) years.***"** **IE-49** As discussed in Comment number 14 above, IEP does not agree with the ten (10) year compliance schedule for meeting the final WQ based effluent limits. IEP requests that Ecology revise the compliance schedule to conform to the requirements of Federal (40CFR§1313(a)(1)) and Washington State law (RCW 90.48.605), the Foundational Concepts for the DO TMDL, and the permit fact sheet (page 14 of 47): "*The Engineering Report will (if necessary) be accompanied by amendments to the schedule and substance of the target pursuit actions so that in combination with the Engineering Report on expected technology performance, there is reasonable assurance of meeting the final WQBELs in ten (10) years (unless a longer compliance schedule becomes available under RCW 90.48.605).*"	IE-48. Comment noted. Ecology would acknowledge the results from the pilot testing installed prior to issuance of this permit. Ecology has added this language to the final permit. IE-49. Ecology has referenced a compliance schedule in excess of 10 years in the final permit. See response to comment IE-37.

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Ms. Shara-Li Joy Page 15 November 17, 2010 23. **S5. Schedule of Compliance for Total Phosphorus, CBOD, and Ammonia, Footnote (f) page 15 of 38:** states "*The waste load allocations for ammonia, total phosphorus, and CBOD are 24.29, 1.23, and 123.2 lbs/day seasonal average from March to October, respectively (0.71, 0.036, and 3.6 mg/L, respectively, at a discharge flow of 4.1 mgd).*" The discharge flow projection of 4.1 MGD used for determination of IEP's DO TMDL waste load allocations is treated wastewater discharge flow and does not include non-contact cooling water (NCCW). This treated wastewater flow projection has been well documented throughout the historical development of the DO TMDL and has been acknowledged by Ecology[6]. Differentiation of this discharge flow is critical to IEP for recognition of its water conservation, reclamation and re-use efforts as one of the delta elimination methods to comply with the DO TMDL WLAs. **IE-50** Therefore, IEP requests that Footnote (f) be revised as follows: "*The waste load allocations for ammonia, total phosphorus, and CBOD are 24.29, 1.23, and 123.2 lbs/day seasonal average from March to October, respectively (0.71, 0.036, and 3.6 mg/L, respectively, at a treated wastewater discharge flow of 4.1 mgd).*" 24. **S5. Schedule of Compliance for Total Phosphorus, CBOD, and Ammonia, Footnote (f) page 16 of 38:** As stated in Comment number 19 above, Ecology has made a commitment to provide IEP with certainty through consideration of the BAP results from the Spokane Regional Wastewater Phosphorus Bio-availability Study, as defined by the Dispute Resolution Panel and adopted by the Director: "*The report is then available for use in setting permit limits. The WQP should work with IEP and the city of Spokane to determine if a permit modification earlier than 2015 would help provide more certainty.*" The NPDES permit should also allow for changes due to future Federal or Washington State water quality standard revisions, DO TMDL revisions, 10th year assessments results, use changes to water bodies based on new data (UAA), and any other new information that results in a change to the TMDL WLA's. Based on the above, IEP requests that Footnote (f) be revised as follows: **IE-51** "*The Department may adjust the final water quality based effluent limitations on the basis of new information including: the percentage of bio-available phosphorus in the effluent as determined from the Spokane Regional Wastewater Phosphorus Bio-availability Study or other Ecology approved studies; the results of the Avista Dissolved Oxygen Water Quality Attainment Plan; the ability to reduce nonpoint source nutrient, CBOD and ammonia loading to the Spokane River and Lake Spokane; changes due to future Federal or State water quality standard revisions; DO TMDL revisions; 10th year assessments results; use changes to water bodies based on new data (UAA); and any other new information that results in a change to the TMDL WLA's.*" **IE-52** 25. **S5. Schedule of Compliance for Total Phosphorus, CBOD, and Ammonia, pages 15 and 16 of 38:** Based on comment numbers 12 through 24 above, IEP suggests that Section S5 be revised as follows: [6] Letter from Douglas P. Krapas to David Peeler (March 3, 2006)	IE-50. The final permit includes a consideration for background concentrations of nutrients in the facility's once through, non-contact cooling water (NCCW), to the extent nutrient concentrations in the groundwater supply for NCCW are equal to nutrient concentrations in the Spokane River upstream of the site. The facility withdraws process and NCCW supply water from an onsite well located within 400 feet of the river. Additionally, the facility lies along a losing reach of the Spokane River, where river water recharges the aquifer. Therefore, the NCCW supply water may contain nutrients originating from the Spokane River. Ecology believes that the nutrient concentrations in the NCCW supply well, to the extent they are equal to nutrient concentrations in the Spokane River upstream of the site, should not be counted toward compliance with the final water quality based limits. Ecology based this belief on the fact that an unaltered river water withdrawal , discharged back into the river at the same location and same nutrient concentrations, would not result in any change in dissolved oxygen levels in Lake Spokane. After verifying the relationship between the NCCW supply well and upstream river water nutrient concentrations with a season's worth of sampling results, Ecology will include this allowance at the next permit renewal. IE-51. Ecology has revised the compliance schedule language to include modifications of final water quality based effluent limitations based on new information (extended critical season, bioavailability determinations, etc.). IE-52. See response to comments IE-43 and IE-51.

S5. SCHEDULE OF COMPLIANCE FOR BIOAVAILABLE PHOSPHORUS, CBOD, AND AMMONIA

Target Pursuit Action	*Compliance Date*
BMP Plan and Status Update Report[a]	*February 1st of the last year of the permit cycle*
Delta Elimination Plan[b]	*Three (3) years after permit effective date*
Technology Selection Protocol for Treatment Technology[c]	*One (1) year after Ecology approval of the Delta Elimination Plan*
Engineering Report for Treatment Technology[d]	*One (1) year after Ecology approval of the Technology Selection Protocol*
Phosphorus Treatment Technology	*Must be installed and operational within three (3) years after Ecology approval of the Engineering Report*[e]
Meet Final Water Quality Based Effluent Limits[f]	*Ten (10) years after permit effective date (unless a longer compliance schedule becomes available under RCW 90.48.605)*

[a] The BMP Plan and Status Update Report shall, at a minimum, include detailed updates on the treatment technology (status of report preparation, construction, and/or performance reviews, etc.) and delta elimination plans (status of report preparation, implementation progress, accounting of delta credits earned and expended, etc.). The report shall also include an assessment on the progress of meeting the final waste quality based effluent limits (WQBELs) through the combination of treatment technology and delta elimination.

[b] Delta elimination plan will include a schedule for other phosphorus, CBOD and ammonia removal actions such as conservation, effluent re-use, source control through support of regional phosphorus, CBOD and ammonia reduction efforts (such as limiting use of fertilizers and dishwasher detergents), water quality trading as determined through the Washington Trading Framework report, supporting regional non-point source control efforts to be established, and maintaining elements of the Spokane River Phosphorus Management Plan by extending the bubble concept to all other dischargers (including Idaho) for bioavailable phosphorous, $CBOD_5$ and ammonia. The delta elimination plan may include a demonstration that a certain stable fraction of the phosphorus discharged from the facility is not bio-available in the River environment and is not a nutrient source. This demonstration must consider findings from the University of Washington/ WERF bioavailability lab study. The demonstration may also include results from subsequent monitoring and modeling of bio-available phosphorus.

Subject to Ecology approval and to the extent it is consistent with the assumptions used to develop the DO TMDL, the demonstration that a certain stable fraction of the phosphorus discharged from the facility is not bio-available in the River environment and is not a nutrient source may be recognized as cause to adjust the total phosphorus WQBELs in the NPDES permit. The written report describing the findings of the BioP study may be used in setting permit limits during the current permit cycle to provide the discharger with certainty. The plan may also include an analysis, subject to Ecology approval that provides a pollutant loading equivalency relating phosphorus, CBOD and ammonia. The plan, in combination with the pollutant reduction from technology, shall provide reasonable assurance of meeting the

adjustment of the final effluent limitations that result in less stringent limitations is subject to the provisions of the Clean Water Act for deriving limitations in section 303(d)(4)(A), 42 U.S.C. § 1313(d)(4)(A) as well as the anti-backsliding provisions of the Clean Water Act, including the exceptions in section 402(o)(2) of the Clean Water Act, 33 U.S.C. § 1342(o)(2).

IE-53

26. **S6. PCB Best Management Practices (BMP) Plan, page 17 of 38:** As stated in Comment number 5 above, the PCB BMP Plan and PCB Source Identification Study are not mutually exclusive, but are interrelated and cannot be completed in accordance with Ecology's schedule. The PCB BMP Plan will be a product of the PCB Source Identification Study, and therefore the identification study must first be completed prior to the BMP plan. IEP suggests that the First Submittal Date for the Scope of Work for PCB Source Identification Study (S6.B) be "Two (2) years after permit issuance date" and that the First Submittal Date for the PCB BMP Plan (S6.A) be "Four (4) years after permit issuance date." At least two years will be required to perform the PCB Source Identification Study, evaluate the results and develop a subsequent PCB BMP Plan.

27. **S12.A. Acute Toxicity, page 23 of 38**: Requires IEP to conduct effluent characterization for acute toxicity on the final effluent within sixty (60) days of the permit effective date.

IE-54

As discussed in Comment number 6 above, IEP does not agree with the need for effluent characterization testing for acute toxicity. IEP has continuously performed acute toxicity testing on a quarterly basis, demonstrating 100% survivability in 100% final effluent for all tests. No changes to IEP's process have occurred since the latest test that would cause or increase effluent toxicity, therefore subsequent permits should not contain a requirement for effluent characterization in accordance with WAC 172-205-030(5)(b). IEP requests that Ecology eliminate the requirements for effluent characterization for acute toxicity as defined under S12.A.

IE-55

28. **S13. Chronic Toxicity, page 26 of 38:** As discussed in Comments number 6 and number 27 above, IEP does not agree with the need for chronic toxicity testing. IEP requests that Ecology eliminate the requirements for chronic toxicity characterization as defined under S13.A.

Fact Sheet for NPDES Permit No. WA-000825:

1. **Surface Water Quality Criteria, page 10 of 47:** states "*In 1989, the Spokane River Phosphorus Management Plan was adopted to meet the 25 ug/L total phosphorus criteria. This plan set total phosphorus limits for each point source discharger to the Spokane River. Under the current plan, two industrial dischargers (the permittee and Kaiser Aluminum Trentwood) are given a monthly average aggregate limit (industrial bubble limit) and a specific individual limit. Under this scenario, one discharger would not have a permit violation of their individual limit as long as the industrial bubble limit is met. The industrial bubble limit is 16.55 Kg per day (36.4 pounds per day) while Inland Empire Paper Company's specific individual limit is 11.2 Kg per day (24.7 pounds per day). These current limits only apply during the algal growing season (June 1 to October 31).*"

IE-56

As stated in Comment number 7 under the Draft NPDES Permit above, there have been no changes to the development of interim limits for this draft permit that would preclude compliance as is currently performed under the "Spokane River Phosphorus Management Plan". IEP and Kaiser request that compliance for the interim total phosphorus limits should continue under the

IE-53. See response to comment IE-10.

IE-54. See response to comment IE-19.

IE-55. See response to comment IE-19.

IE-56. See response to comment IE-20.

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  IE-56 (con'd) Spokane River Phosphorus Management Plan. If Ecology refuses to incorporate the existing compliance language, it should provide an explanation as to the rationale for removing this provision in the draft permit. 2. **Surface Water Quality Criteria, page 11 of 47:** states "*As a result of the 2004 draft report, Ecology, NPDES point source dischargers, and other interested parties formed the Spokane River Collaboration to cooperatively address the low dissolved oxygen concentrations in the Spokane River. This effort culminated in a Foundational Concepts document that outlines actions necessary to reduce phosphorus discharged to the river. While parts of this document are now dated due to the new modeling approach used for the approved TMDL, the Department will use some elements of the Foundational Concepts to implement the TMDL. This fact sheet discusses the portions of the Foundational Concepts applicable to this discharger in the next section below.*" **IE-57** It is improper, and potentially unlawful, for Ecology to unilaterally dismiss the Foundational Concepts document and selectively choose only certain elements of this document in implementing the DO TMDL. The *Foundational Concepts for the Spokane River TMDL Managed Implementation Plan (Foundational Concepts)* as memorialized by the *Memorandum of Agreement Regarding Foundational Concept, Managed Implementation Plan, and Dissolved Oxygen TMDL for the Spokane River (MOA) was* signed in March of 2007 by Jay Manning as Director of the Department of Ecology on behalf of the State of Washington. Ecology should honor the MOA. 3. **Surface Water Quality Criteria, page 11 of 47:** states "*The Department has also completed a draft Total Maximum Daily Load (TMDL) assessment for PCBs in the Spokane River (Ecology, 2006). The proposed TMDL is based on meeting a downstream Spokane Tribe water quality PCB criterion of 3.37 pg/l. This requires a 95% PCB load reduction at the Idaho border, a 97% load reduction in the Little Spokane River, and over a 99% reduction in municipal, industrial, and stormwater discharges.*" The PCB water quality criterion of 3.37 pg/L is impracticable. The specified value is well below the detection limit for PCBs; even using EPA approved low-level detection methods for individual congeners (Method 1668 - 25 to 50 pg/L) and there are no existing technologies with removal efficiencies even remotely close to those specified. Reference to the draft PCB TMDL in the permit or fact sheet is inappropriate based on the draft and unapproved status of the document. Indeed, the document specifically states on its cover: "**DRAFT – 6/16/06 - Do not cite or quote**." The proposed PCB language in the draft permit is also inconsistent with draft municipal permits issued as a consequence of the DO TMDL. **IE-58** Based on the above, IEP requests that Ecology revise the referenced paragraph to be consistent with Washington State and Federal law and the draft municipal permits: "*For pollutants which are subject to pass through or partial pass through a wastewater treatment plant, such as PCBs, the permit will require identifying and eliminating the source the of PCBs into the collection system. This is consistent with the state's basic Water Pollution Control Statute, Chapter 90.48 RCW and implementing rules (Ch. 173-216 WAC, Ch 173-220 WAC) beginning with the directive to "require the use of all known available and reasonable methods by industries and others to prevent and*	IE-57. See response to comment IE-8. IE-58. The fact sheet retains the reference to the draft Spokane River PCB TMDL without modification. The suggested language fails to acknowledge the PCB conditions in the receiving waters, and the magnitude of the PCB problem.

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  IE-58 (con'd) *control the pollution of the waters of the state of Washington." The permit writer's manual includes guidelines for appropriate BMPs in Chapter XII. Based on collection system monitoring results, this permit proposes source identification and cleanup activities following the administrative procedures for BMPs. EPA rules (40 CFR Subpart K (44 FR 32954-5)) do provide for the use of narrative limitations (BMPs) rather than numeric effluent limitations.*" 4. **BOD5, Ammonia, and Total Phosphorus, page 12 of 47:** states "*The Foundational Concepts spreads this approach over a twenty year managed implementation plan (MIP). During the first ten years of the MIP, dischargers will focus efforts to reduce phosphorus discharged to the Spokane River. Permittees would accomplish these reductions by a combination of phosphorus treatment technology and other target pursuit actions*" **IE-59** This statement in the fact sheet recognizes the twenty year implementation plan incorporated in the DO TMDL MIP and Senate Bill 6036, codified as RCW 90.48.605. As discussed in Comment number 14 to the permit above this twenty year plan should be incorporated into the compliance schedule of the permit for attainment of the DO TMDL waste load allocations. This legislation was enacted specifically to address situations such as the Lake Spokane DO TMDL where a compliance schedule is appropriate and a permittee is unable to meet its waste load allocation solely by controlling and treating its effluent. There is no question that a compliance schedule is appropriate and Ecology has already acknowledged in the dispute resolution process that the treatment technology is not available that would enable IEP to achieve compliance with its waste load allocation. A compliance schedule in excess of ten years is therefore appropriate under RCW 90.48.605. Necessity of a twenty year compliance plan to meet the goals of the DO TMDL is supported by the lack of certainty regarding Ecology approved delta elimination plans and the need for long-term non-point source reductions. **IE-60** IEP requests that Ecology revise the compliance schedule to twenty (20) years to conform to the requirements of Federal (40CFR§1313(a)(1)) and Washington State law (RCW 90.48.605) and the Foundational Concepts for the DO TMDL. At a minimum, the permit and permit fact sheet **IE-61** should acknowledge that Ecology has an affirmative obligation to amend the state water quality standards to provide a longer compliance schedule in the circumstances of this permit and that the compliance schedule may be lawfully extended in the future consistent with RCW 90.48.605. **IE-62** Ecology should explain whether it intends to include the opportunity for a 20 year compliance schedule pursuant to RCW 90.48.605 in the upcoming triennial review of the state water quality **IE-63** standards. Ecology should also disclose whether IEP will be eligible for a 20 year compliance schedule in future permit cycles if it otherwise qualifies under the statute or whether the limitation on a 10 year compliance schedule in the current permit will preclude any otherwise lawful extension of the compliance schedule under the statute. **IE-64** 5. **BOD5, Ammonia, and Total Phosphorus, NPDES Permit Cycle Table, page 13 of 47:** The table should be modified to reflect actual dates determined by the effective beginning date of the final, Cycle number 1 NPDES permit.	IE-59. Ecology has added reference to a compliance schedule in excess of 10 years in the final permit. See response to comment IE-37. The Permittee should note that this law states that Ecology shall '…amend the state water quality standards to authorize compliance schedules in excess of ten years…'. The law does not state that compliance schedules be authorized for up to twenty years. IE-60. The final permit includes language referencing both RCW 90.48.605 and a compliance schedule in excess of 10 years. See responses to comment IE-37. IE-61. Comment noted. According to RCW 90.48.605, Ecology must amend the State's Water Quality Standards to authorize compliance schedules in excess of ten years. IE-62. See response to comment IE-61. IE-63. When incorporated into the Water Quality Standards, Ecology believes modifying the permit to lengthen the compliance schedule beyond 10 years, consistent with requirements of RCW 90.48.605, will be lawful. IE-64. Comment noted. Ecology has modified these dates consistent with the issuance date of this permit.

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  6. **BOD5, Ammonia, and Total Phosphorus, NPDES Permit Cycle Table, page 13 of 47:** states "*By Year 10 - Final wasteload allocation: effluent data + delta elimination = 1.26 lbs/day (36µg/L @ 4.1 mgd) total phosphorus with possible modifications based on new information.*" **IE-65** As discussed in Comment number 14 above, IEP does not agree with the ten (10) year compliance schedule for meeting the final WQ based effluent limits. IEP requests that Ecology revise the compliance schedule to conform to the requirements of Federal (40CFR§1313(a)(1)) and Washington State law (RCW 90.48.605), the Foundational Concepts for the DO TMDL, and the permit fact sheet (page 14 of 47): **IE-66** As discussed in Comment number 23 to the NPDES Permit above, the discharge flow projection of 4.1 MGD used for determination of IEP's DO TMDL waste load allocations is treated wastewater discharge flow and does not include non-contact cooling water (NCCW). As stated in Comment number 19 above, Ecology has made a commitment to provide IEP with certainty through consideration of the BAP results from the Spokane Regional Wastewater Phosphorus Bio-availability Study, as defined by the Dispute Resolution Panel and adopted by the Director: "*The report is then available for use in setting permit limits. The WQP should work with IEP and the city of Spokane to determine if a permit modification earlier than 2015 would help provide more certainty.*" **IE-67** Based on the above, IEP requests that the referenced statement be revised as follows: "*By Year 10 (unless a longer compliance schedule becomes available under RCW 90.48.605) - Final waste load allocation: effluent data + delta elimination = 1.26 lbs/day (36µg/L @ 4.1 mgd treated wastewater flow) bioavailable phosphorus with possible modifications based on new information.* 7. **BOD5, Ammonia, and Total Phosphorus, page 14 of 47:** states "*State and Federal law require NPDES permit contain water quality based effluent limits for all applicable parameters, and State law limits compliance schedules necessary to meet water quality based effluent limits to no longer than 10 years (unless a longer compliance schedule becomes available under RCW 90.48.605)*." **IE-68** As stated in Comment number 14 to the NPDES permit above, IEP requests that Ecology provide a compliance schedule of twenty (20) years to conform to the requirements of Federal (40CFR§1313(a)(1)) and Washington State law (RCW 90.48.605) and the Foundational Concepts for the DO TMDL. At a minimum, the permit should acknowledge that Ecology has an **IE-69** affirmative obligation to amend the state water quality standards to provide a longer compliance schedule in the circumstances of this permit and that the compliance schedule may be lawfully **IE-70** extended by permit modification or renewal consistent with RCW 90.48.605. The fact sheet clearly states this obligation: "*(unless a longer compliance schedule becomes available under RCW 90.48.605)*." The permit language relative to the ten year compliance schedule to meet the water quality based effluent limits should be consistent with the language provided in the fact sheet. **IE-71** Ecology should explain whether it intends to include the opportunity for a 20 year compliance schedule pursuant to RCW 90.48.605 in the upcoming triennial review of the state water quality standards. Ecology should also disclose whether IEP will be eligible for a 20 year compliance	IE-65. At this time, Ecology must includes a compliance schedule consistent with the current Water Quality Standards, which specify a maximum compliance schedule length of 10 years. IE-66. See response to comment IE-50. IE-67. Ecology has added language to the final permit a compliance schedule in excess of 10 years and RCW 90.48.605. IE-68. See responses to comments IE-59 and IE-65. IE-69. According to RCW 90.48.605, Ecology must amend the State's Water Quality Standards to authorize compliance schedules in excess of ten years contingent upon certain conditions. IE-70. See response to comment IE-67. IE-71. See response to comment IE-69.

IE-72 schedule in future permit cycles if it otherwise qualifies under the statute or whether the limitation on a 10 year compliance schedule in the current permit will preclude any otherwise lawful extension of the compliance schedule under the statute.

8. **Technology Selection Protocol, page 14 of 47:** states "*NPDES permit holders will prepare, and submit to Ecology for approval, a comprehensive technology selection protocol for choosing the most effective feasible technology for seasonally removing phosphorus, CBOD, and ammonia from their effluent. If pilot testing is a part of the protocol, there will be appropriate provisions for quality assurance and control. The protocol will include a preliminary schedule for construction of the treatment technology.*"

IE-73 As discussed under Comment number 21 above, Ecology must recognize IEP's past and present efforts and investments as authorized efforts towards achievement of the DO TMDL. This includes investments over 9 million dollars in the pilot testing of ten advanced phosphorus reduction technologies, installation of the first large-scale phosphorus removal system on the Spokane River and maximizing BOD removal with the installation of advanced equipment to the existing secondary treatment system. Based on the above, IEP requests that the referenced paragraph include the following; "*Ecology will also recognize results from pilot testing efforts and full-scale implementation of any technologies installed prior to this permit.*"

9. **Delta Elimination Plan, page 14 of 47:** states "The Delta Elimination Plan will include a schedule for other phosphorus, CBOD, and ammonia removal actions such as conservation, effluent re-use, source control through support of regional phosphorus, CBOD, and ammonia reduction efforts (such as limiting use of fertilizers and dishwasher detergents), and supporting regional non-point source control efforts to be established."

IE-74 The description of the Delta Elimination Plan elements should be consistent with Footnote (b) in the S5. Schedule of Compliance for Total Phosphorus, CBOD, and Ammonia of the permit: "*Delta elimination plan will include a schedule for other phosphorus, CBOD and ammonia removal actions such as conservation, effluent re-use, source control through support of regional phosphorus, CBOD and ammonia reduction efforts (such as limiting use of fertilizers and dishwasher detergents), water quality trading as determined through the Washington Trading Framework report, supporting regional non-point source control efforts to be established, and maintaining elements of the Spokane River Phosphorus Management Plan by extending the bubble concept to all other dischargers (including Idaho) and to all regulated parameters. The delta elimination plan may include a demonstration that a certain stable fraction of the phosphorus discharged from the facility is not bio-available in the River environment and is not a nutrient source. This demonstration must consider findings from the University of Washington/ WERF bioavailability lab study. The demonstration may also include results from subsequent monitoring and modeling of bio-available phosphorus.*"

10. **Delta Elimination Plan, page 14 of 47:** states "*The plan, in combination with the pollutant reduction from technology, will provide reasonable assurance of meeting the permit holder's WLA's in ten years (2020).*"

IE-75 IEP does not agree with the ten (10) year compliance schedule or the 2020 date per our Comment number 14 to the NPDES Permit and Comment number 5 to the Fact Sheet above. IEP requests that Ecology revise the compliance schedule to twenty (20) years to conform to the

IE-72. When incorporated into the Water Quality Standards, Ecology believes modifying the permit to lengthen the compliance schedule beyond 10 years, consistent with requirements of RCW 90.48.605, will be lawful.

IE-73. See response to comment IE-48.

IE-74. Ecology has modified the Delta Elimination language of the final permit based on this comment, and others received during the public comment period. This revised language references the Trading Framework, as well as the bubble limit concept.

IE-75. See response to comment IE-65.

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  IE-76 requirements of Federal (40CFR§1313(a)(1)) and Washington State law (RCW 90.48.605) and the Foundational Concepts for the DO TMDL. IEP requests that the referenced paragraph be revised as follows: *"The plan, in combination with the pollutant reduction from technology, will provide reasonable assurance of meeting the permit holder's WLA's in ten years (unless a longer compliance schedule becomes available under RCW 90.48.605)."* **11. Engineering Report, page 14 of 47:** states "*The Engineering Report will also (if necessary) be accompanied by amendments to the schedule and substance of the target pursuit actions (i.e. Delta Elimination) so that in combination with the expected technology performance, there is reasonable assurance of meeting the WLAs in ten years (2020).*" IE-77 IEP does not agree with the ten (10) year compliance schedule or the 2020 date per our Comment number 14 to the NPDES Permit and Comment number 5 to the Fact Sheet above. IEP requests that Ecology revise the compliance schedule to twenty (20) years to conform to the requirements of Federal (40CFR§1313(a)(1)) and Washington State law (RCW 90.48.605) and the Foundational Concepts for the DO TMDL. IEP requests that the referenced paragraph be revised as follows: IE-78 *"The Engineering Report will also (if necessary) be accompanied by amendments to the schedule and substance of the target pursuit actions (i.e. Delta Elimination) so that in combination with the expected technology performance, there is reasonable assurance of meeting the WLAs in ten years (unless a longer compliance schedule becomes available under RCW 90.48.605)."* **12. Water Quality Based Limits, page 14 of 47:** states that IEP's 2027 Projected Flow Rate is 4.1 MGD. As discussed in Comment number 23 to the permit above, the discharge flow projection of 4.1 MGD used for determination of IEP's DO TMDL waste load allocations is treated wastewater discharge flow and does not include non-contact cooling water (NCCW). Differentiation of this discharge flow is critical to IEP for recognition of its water conservation, reclamation and re-use efforts as one of the delta elimination methods to comply with the DO TMDL WLAs. IE-79 Therefore, IEP requests that the title of the chart column be revised to: "*2027 Projected Treated Wastewater Flow Rates (MGD).*" **13. Water Quality Based Limits, page 15 of 47:** states "At the end of the second permit term, the Department will have sufficient data to determine effluent variability from the installed treatment technology. At this time, the Department may include daily maximum, monthly average, or seasonal total loads as the final WQBELs; as determined appropriate and consistent with the seasonal average WLAs."	IE-76. Ecology has added language to the final permit referencing a compliance schedule in excess of 10 years and RCW 90.48.605. IE-77. See responses to comments IE-59 and IE-65. IE-78. See response to comment IE-76. IE-79. See response to comment IE-50.

There is no certainty that Ecology will have sufficient data at the end of the second permit term to determine effluent variability. Ecology is imposing one of the most stringent final effluent limitations in the nation. There is no available technology and source reduction that will enable IEP to achieve this limit and Ecology has not identified or confirmed any available "delta elimination" opportunity that provides a clear route to achieving the DO TMDL WLA assigned to IEP.

IE-80

It is likely that by the end of the second permit term, Ecology will lack sufficient information to translate a seasonal average WLA to a monthly maximum average water quality based effluent limitation. The same limitations on such an approach in the current permit are likely to apply at the end of the second permit term. IEP requests that Ecology eliminate the referenced paragraph.

14. Water Quality Based Limits, Table on page 16 of 47:

IE-81

As discussed in Comment number 13 and number 14 to the permit above, IEP does not agree with the compliance schedule provided in the table of Target Pursuit Actions. IEP requests that Ecology revise the table as follows:

Target Pursuit Action	*Compliance Date*
BMP Plan and Status Update Report[a]	*February 1st of the last year of the permit cycle*
Delta Elimination Plan	*Three (3) years after permit effective date*
Technology Selection Protocol for Treatment Technology	*One (1) year after Ecology approval of the Delta Elimination Plan*
Engineering Report for Treatment Technology	*One (1) year after Ecology approval of the Technology Selection Protocol*
Phosphorus Treatment Technology	*Must be installed and operational within three (3) years after Ecology approval of the Engineering Report*
Meet Final Water Quality Based Effluent Limits	*Ten (10) years after permit effective date (unless a longer compliance schedule becomes available under RCW 90.48.605)*

15. Total PCBs, page 16 of 47: states "Total PCBs-- The draft PCB TMDL report assigns a WLA to Inland Empire Paper Company of 5.32 pg/L. Since the TMDL is still draft, and has not been approved by the EPA, the Department will not include the WLA in the permit. However, similar to phosphorus, CBOD, and ammonia, the proposed permit will contain an interim PCB limit as a BMP plan. The goal of the PCB BMP plan is to maintain or lower effluent concentrations through source identification and elimination. The proposed permit also requires routine PCB effluent monitoring (Permit Condition S2) and a PCB source identification study as a component of the BMP plan."

IE-82

As discussed in Comment number 3 to the Fact Sheet above, the PCB waste load allocation of 5.32 pg/L is impracticable. The specified value is well below the detection limit for PCBs; even using EPA approved low-level detection methods for individual congeners (Method 1668 - 25 to 50 pg/L). Reference to the draft PCB TMDL in the permit or fact sheet is inappropriate based on

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IE-80. With the installation of treatment technology scheduled for 5 years after the permit issuance date, Ecology expects to have enough effluent variability to establish maximum daily and monthly average permit limits.

IE-81. Ecology believes the compliance schedule in the draft permit is consistent with the requirements of the TMDL, managed implementation plan, and Foundational Concepts. However, in order to allow the Permittee time to evaluate new treatment technologies, Ecology has lengthened the compliance schedule in the final permit. See response to comment IE-8.

IE-82. See response to comment IE-58.

IE-82 (con'd) the draft and unapproved status of the TMDL which specifically states "**DRAFT – 6/16/06 - Do not cite or quote**." Furthermore, there are no references to PCB waste load allocations in any of the draft municipal permits issues as a consequence of the DO TMDL.

IE-83 Based on the above, IEP requests that Ecology revise the referenced paragraph to be consistent with Washington State and Federal law and the draft municipal permits: *"For pollutants which are subject to pass through or partial pass through a wastewater treatment plant, such as PCBs, the permit will require identifying and eliminating the source the of PCBs into the collection system. This is consistent with the state's basic Water Pollution Control Statute, Chapter 90.48 RCW and implementing rules (Ch. 173-216 WAC, Ch 173-220 WAC) beginning with the directive to "require the use of all known available and reasonable methods by industries and others to prevent and control the pollution of the waters of the state of Washington." The permit writer's manual includes guidelines for appropriate BMPs in Chapter XII. Based on collection system monitoring results, this permit proposes source identification and cleanup activities following the administrative procedures for BMPs. EPA rules (40 CFR Subpart K (44 FR 32954-5)) do provide for the use of narrative limitations (BMPs) rather than numeric effluent limitations.*"

IEP appreciates the opportunity to provide public comments to Draft NPDES Permit No. WA 000082-5 and the accompanying Fact Sheet, and requests that Ecology revise the permit and fact sheet in accordance with the above comments and recommendations.

Sincerely,

Douglas P. Krapas
Environmental Manager

Attachments

c: K. Rasler

IE-83. See response to comment IE-58.

COMMENTS TO NPDES WA-0000825, INLAND EMPIRE PAPER	RESPONSES
 November 17, 2010 Permit Coordinator Department of Ecology 4601 N. Monroe Spokane, WA 99205 Dear Sir: The Lake Spokane Association (LSA) is a non-profit corporation of citizens concerned about the health of Lake Spokane. We appreciate the opportunity to comment on the draft NPDES permits covering the discharge of phosphorus into the Spokane River. **LS-1** We applaud the efforts made, to date, in removing phosphorus from the Spokane River and Lake Spokane through the development of the Dissolved Oxygen TMDL. We understand the need for a 20 year time line to develop phosphorus removal technologies, allowing the dischargers time to implement these technologies. Unfortunately the permits do not adequately address the issue of reducing the impact of high phosphorus levels in Lake Spokane during the 20 year period. During the fall of 2010, a very active blue-green algae bloom, causing unsightly and foul smelling mats, developed in Lake Spokane, lasting two months. When samples of this algae were submitted to a laboratory, paid for by your agency, they found high levels of toxins harmful to human health. The Washington Department of Health then posted signs at key access sites, on the lake, advising citizens to be aware of the blooms and not to use the lake where the blooms were occurring. **LS-2** We ask that the permits require the dischargers to fund or implement procedures that will reduce the presence and impact of the blue-green algae during the life of the permits. Techniques that could be used include treating blue-green algae blooms with chemicals, such as sodium carbonate proxyhydrate or aluminum sulfate at inshore areas. Volunteer funded monitoring programs, such as the LSA, to identify blue-green algae blooms and record turbidity readings, could help this effort. **LS-3** We are aware that local non-point sources around the lake and in the watershed are also adding to the problem. These sources could include lawn fertilizer, yard waste, septic tanks and drain fields, and livestock operations. We see value in dischargers helping fund educational efforts aimed at shoreline homeowners and local citizens regarding the impacts that they have on the health of the lake. We understand that Avista is proposing similar efforts and believe this would be consistent with them. Such efforts could also include funds to dispose of the yard and livestock waste and to inspect septic tanks and drain fields. 18520 N West Shore Rd | Nine Mile Falls WA 99026 | www.lakespokaneassociation.org	LS-1. The point sources will reduce the discharge of oxygen demanding pollutants (total phosphorus, ammonia, and CBOD) within 5 to 7 years after permit issuance. LS-2. The goal of NPDES permit program is to prevent, control and treat pollution at the source, rather than relying on in-water treatment to meet receiving water quality criteria. LS-3. Ecology also envisioned the delta elimination plan could include such measures. Permittees, either individually or combined, could pursue these actions under delta elimination planning.

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Page two Department of Ecology **LS-4** The draft permits are silent about discharging PCB's and other pollutants into the river. A December 2007 report by the U.S. Environmental Protection Agency identified the City of Spokane "as the largest continuing source of PCBs to the river." This is of great concern to the citizens using the Spokane River and Lake Spokane. It is critical that PCB limits be included now when major upgrades to wastewater plants are being installed to address phosphorus. Sincerely, Robert J. Bankard, President Lake Spokane Association	LS-4. Ecology believes the draft permit did address PCBs discharge from the facility into the Spokane River. Based on public comments, the final permit increases initial PCB effluent monitoring and adds an expected timeframe for setting a performance based numeric PCB effluent limit. The permit also establishes best management practices (BMP) plan for PCB source identification and reduction. The performance based numeric limit, in addition to the BMP plan, will ensure the discharge will improve, not worsen, the PCB conditions in the Spokane River. Further, these requirements take definitive first steps to bring the Spokane River and Lake Spokane into compliance with the water quality standards for PCBs.

COMMENTS TO NPDES WA-0000825, INLAND EMPIRE PAPER	RESPONSES
Thank you for the opportunity to comment on the draft NPDES permits for the Spokane River. This issue is of particular importance to the citizens of Millwood since it directly impacts Inland Empire Paper Company and the Spokane River, two important resources in our community. When the IEP mill was constructed in 1911, the company built homes for its workers surrounding the mill. This was the beginning of the Millwood community. In 1928, the City of Millwood was incorporated and the President of IEP became Millwood's first mayor. We have been an integral part of each other's history ever since. Today, IEP provides over ½ of our tax revenue. Its employees live in our community and shop in our stores. IEP also hosts the annual Millwood Christmas Tree lighting ceremony. In short, we could not have a better neighbor and partner. Because of this special relationship, the long-term viability of IEP is of paramount concern to me and all the residents of Millwood. The Spokane River also holds a special place in our community as it flows directly through our town. Protection of this great resource is very important to us. IEP shares our view of the river and has demonstrated over the years their full commitment to protection of this equally important resource. It has consistently spent the necessary money to ensure that state-of-the-art equipment and practices are used to meet all water quality standards. This is simply the way they do business. Their track record proves to me that they are fully committed to meet the new requirements which are being discussed tonight. **M-1** I urge the Department of Ecology on behalf of the citizens of Millwood to find a path forward to allow IEP to meet the new water quality standards. I am hopeful a solution can be found to protect the Spokane River and allow IEP to continue to be a valuable and contributing member of our community for another 100 years. Thank you Mayor Daniel Mork	M-1. Ecology plans to work with Inland Empire Paper Company, as well as other dischargers and affected stakeholders to achieve water quality standards in the Spokane River and Lake Spokane. Ecology's path forward includes measures that will enable Permittees to meet their final water quality based effluent limits through delta elimination. Presently, delta elimination includes accounting for phosphorus bioavailability, trading to reduce nutrient levels consistent with Water Quality Trading Framework, pollutant equivalency, and implementation of a multi-facility bubble limit for nutrients.

DEPARTMENT OF ECOLOGY

PUBLIC HEARING

DRAFT WATER QUALITY PERMITS FOR

SPOKANE RIVER DISCHARGERS IN WASHINGTON

November 10, 2010, 7:00 P.M.

1101 West College Avenue, Spokane, Washington

P R O C E E D I N G

THE HEARINGS OFFICER: Hello. My name is Karin Baldwin, and I am the hearings officer for tonight's hearing. On behalf of the Department of Ecology, thank you for coming and welcome.

Our purpose of our hearing is to gather public comment on the four draft water quality permits for the Spokane River dischargers in Washington State: Spokane's Riverside Park Water Reclamation Facility, Inland Empire Paper, Kaiser Aluminum, and Liberty Lake Sewer and Water District. This hearing is a part of the public comment period for the draft permits. The public comment period ends at 5:00 p.m. on Wednesday, November 17, 2010.

On the table at the back door there's a sign-in sheet and some registration cards that look like this. If you

wish to testify, please fill out a card and give it to me. And I will be calling people up to testimony in the order in which you signed in.

So as the hearings officer, my job is to conduct the hearing and gather your comments for the public record. I also need to make sure that Ecology obtains a clear record of the hearing, which is why we will be recording the hearing and why we've hired a court reporter.

Everyone who wishes to comment will be given the opportunity to testify. In order to give everyone an opportunity to comment, there's a few ground rules. Only one person will speak at a time. And I will call people up to comment in the order in which you signed in, again. And so speakers come to the podium there and speak into the microphone so they can be heard and recorded. And please state your name, the company or organization you represent, if any, and your address for the record. And all of that information is on a sheet there on the podium so you'll remember to say that.

I ask that you speak clearly and not too fast so everyone else can hear you, and so we can obtain a clear recording of the comments. So please keep your comments concise so everybody who has signed in will be able to have a chance to testify. I don't think we'll have a problem with that tonight.

Written comments are given the same consideration as verbal ones. So you can summarize lengthy or repetitive comments. And you may also submit additional written comments, as well.

During the hearing questions can be asked for the record, but they cannot be answered. Questions given during the formal testimony will be answered in the written responsiveness summary at the end of the comment period.

So right now I only have six people who had indicated they would like to provide oral testimony. Is there anybody else who would like to testify at this time?

(No response)

So because we only have six people, and we're here until 9:00 o'clock, does 10 minutes give everybody sufficient time to get all of your comments into the record?

UNIDENTIFIED SPEAKER: Sure.

THE HEARINGS OFFICER: Okay. So we'll go 10 minutes. Audience members, please allow the person commenting to have the floor, so no side conversations. And this will help us to make sure we get a clear recording.

Any questions? Everyone okay with the ground rules?

(No response)

Okay. So I will now start the formal hearing. The court reporter and I will be recording this part of he hearing to make sure we get all of your comments accurately.

So let the record show it is 7:05 p.m., again, on Wednesday, November 10th, 2010. This hearing is being held at the Spokane Regional Health District auditorium located at 1101 West College Avenue in Spokane, Washington.

This hearing is about four draft permits for Spokane River dischargers in Washington State: Spokane's Riverside Park Water Reclamation Facility, Inland Empire Paper, Kaiser Aluminum, and Liberty Lake Sewer and Water District.

Ecology issued a news release about the comment period, workshop and this hearing for the draft permits on October 4th, 2010, to the media in the Spokane area.

Also on October 4th, 2010, Ecology emailed an announcement of the comment period, workshop and hearing to a distribution list of interested individuals.

Legal ads of the public comment period and hearings were published in the Spokesman-Review on October 5th, 2010.

Ecology also placed information about the draft permits on their website, and just recently included an announcement about the hearing on their online public calendar.

It is now time for the formal hearing period for anyone who would like to comment. Before we start, again, has everybody who wants to testify given me a registration card?

(No response)

Okay. As I said, I'll be calling you to testify in the order in which you signed in. Remember, limit comments to 10 minutes and no extra noise. When you are nearing the end of your time, I will hold up a card to let you know there's 30 seconds remaining. And I will state when your time is over, and I'll call the next person up to comment. After everyone is finished, I will provide an opportunity for any other people to testify.

When I call your name, please come up to the podium and state your name, the company or organization you represent, if any, and your address.

We will begin with Ken Blankenship followed by Mike Poulson.

MR. KEN BLANKENSHIP: All right. My name's Ken Blankenship. The organization I'm representing is BASF Corporation. My address is 15906 North McKinnon Lane, Colbert, Washington, 99005.

THE HEARINGS OFFICER: I'm sorry to interrupt. But can you turn on your microphone. There's a little button in the middle there.

MR. KEN BLANKENSHIP: There you go.

THE HEARINGS OFFICER: Thank you.

MR. KEN BLANKENSHIP: So as I said, my name's Ken Blankenship. I'm an engineer for BASF Corporation and spend the majority of my workweek managing my business at Inland

Empire Paper Company. My wife, Kim, and I reside in Colbert, Washington, about 10 miles north of the Inland Empire paper mill.

My work has allowed me to make a good living. And we purchased a home in 1998 and consider the greater Spokane area our permanent home. Our two children attended grade school, middle school and high school here. Currently they're both attending college locally at WSU and Whitworth University.

Since relocating here from Minnesota, we've had several opportunities to relocate within the U.S. and internationally. I have consistently declined these opportunities because of the quality of life here coupled with the professional and personal satisfaction I've enjoyed working with Inland Empire Paper Company. Without Inland, the reality of my family being able to remain in the Spokane area does not exist.

I've been a part of the paper industry since 1987 and have witnessed good times of growth and prosperity, but recently the rapid decline of our industry. With the decline, I have seen untold numbers of good jobs like those at Inland and jobs of outside support people like myself disappear for good. I believe Inland is an exception to this trend. The investment I've seen over my 12 years here and the long-term commitment that the mill's ownership makes

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to its business, employees and community is unique in my experience.

A good portion of the business I have at Inland is with their process water treatment systems. I have worked closely with their technical people over the last several years to solve a number of challenges the Lake Spokane TMDL presents. I can attest to the focus, dedication and expertise that they have brought to the table to devise solutions. I know Inland is doing its part. My request of Ecology is that for the betterment of Spokane's residents and economy that you do your part to make sure their efforts are allowed to succeed.

PH-1

THE HEARINGS OFFICER: Thank you, very much.

MR. KEN BLANKENSHIP: Thank you.

THE HEARINGS OFFICER: Mike Poulson followed by Bart Haggin.

MR. MIKE POULSON: My comment will be on behalf of Congresswoman Cathy McMorris Rogers.

I appreciate the opportunity to express my concerns regarding the draft National Pollutant Discharge Elimination System permit and the potential impact and precedent it will set for Spokane County and the small communities in Eastern Washington. I would like to take this opportunity to recognize the efforts of our local TMDL advisory group who have worked tirelessly to develop a plan that will allow

PH-1. Ecology plans to work with Inland Empire Paper Company, as well as other dischargers and affected stakeholders to achieve water quality standards in the Spokane River and Lake Spokane. Ecology's path forward includes measures that will enable Permittees to meet their final water quality based effluent limits through delta elimination.

Presently, delta elimination includes accounting for phosphorus bioavailability, trading to reduce nutrient levels consistent with Ecology's Water Quality Trading Framework, pollutant equivalency, and implementation of a multi-facility bubble limit for nutrients.

COMMENTS TO NPDES WA-0000825, INLAND EMPIRE PAPER	RESPONSES

Spokane and the region to prosper.

I wholeheartedly support efforts to ensure clean water, both for our communities and for fish populations. I recognize that balancing the appropriate level of regulatory enforcement needed to protect our natural resources with the demand for economic growth can be a difficult task. However, I am concerned that the draft permit may go beyond what is necessary to achieve this objective, will create an uncertain environment for our businesses and ultimately will have an adverse impact on our region.

We all agree that regulatory requirements should be consistent with the best available technology. However, the proposed regulations relating to the TMDL cannot be met with the best available technology. As you may be aware, the University of Washington has conducted additional studies relating to the issue of phosphorus bio availability. The UW studies reveal that some phosphorus in discharges may not contribute to the algae growth or to reduction in oxygen in the river. I urge the Department of Ecology to work with the University of Washington to incorporate these scientific studies as it finalizes the NPDES permit.

If we are going to continue to maintain and improve environmental quality, science should play a significant role. It is in all of our best interests to find solutions that are not only affordable but technologically possible in

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PH-2. Ecology believes the permit implements the necessary requirements to meet receiving water quality standards. Among the requirements that lessen the impacts on dischargers include the compliance schedule for meeting the final water quality based effluent limits and the use of delta elimination.

Ecology acknowledges the delta elimination planning creates some uncertainly for discharges at this point in time. However, Ecology remains confident that these uncertainties will diminish as delta elimination options are developed by the dischargers.

PH-3. Ecology also acknowledges that the Permittee will likely rely on technology plus delta elimination to meet their final water quality based limits. The final permit includes language that enables the facility to meet their final limits with delta elimination options. These options include accounting for phosphorus bioavailability, trading to reduce nutrient levels consistent with Ecology's Water Quality Trading Framework, pollutant equivalency, and implementation of a multi-facility bubble limit for nutrients.

PH-4. Ecology plans to work with the University of Washington, dischargers, and other affected stakeholders on bioavailability determinations. Ecology expects to incorporate bioavailability results in a modification to the Spokane River DO TMDL. In turn, Ecology will place any revised WLAs into the permits at the second permit term, or sooner, through permit modification.

COMMENTS TO NPDES WA-0000825, INLAND EMPIRE PAPER	RESPONSES
PH-5	PH-5. Although the main topic discussed was phosphorus, the permits do address the discharge of all pollutants of concern to the Spokane River. These include other oxygen demanding pollutants (ammonia, CBOD), PCBs, and metals (cadmium, lead and zinc).

order to achieve a clean environment.

Thank you again for the opportunity to express my views.

Cathy McMorris Rogers.

THE HEARINGS OFFICER: Thank you, very much.

Bart Haggin followed by Larry Elmose.

MR. BART HAGGIN: My name's Bart Haggin. And I'm representing the Alliance Council. I live at 15418 North Little Spokane Drive. A while back one of the comedians did a parody of Marlon Brando addressing a group of Mafia dons. And it went something like this: Your son is dead. My son is dead. Our wives are all alive. Where are our priorities? And that's what I'm speaking about today, the priorities of the DOE.

We're talking here about only really one element, and that's phosphorous. Ignoring the PCBs, at least the perception is that we're ignoring PCBs and other contaminants. And perception becomes reality. And it's really important that we talk about the other elements and be clear about what the other elements are that are being addressed by the Department of Ecology.

Now, I understand what we're talking about here. There's a great pushback from the rich and the powerful, the corporations, the collectives that have a, a real stake in the costs and the problems of cleaning up our river. We've

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been working and cleaning up this river since the Clean Water Act.

And never forget that the Clean Water Act when it was enacted was the premise that we would be able to swim in all of the rivers of the United States and eat all of the fish out of the rivers of the United States by 1986. Well, I don't think that we're living up to our commitments.

And I would really urge the DEO to change their priorities, emphasize other than just phosphorous, which I know is very important, but emphasize the other elements that really make up the total maximum daily load of the Spokane River.

Now, I live on the Little Spokane River. And we've constantly emphasized these elements with DOE. But, of course, enforcement is almost impossible. Here are your priorities. You've got a water master in Walla Walla and no water master in Eastern Washington other than that. Here in the cities in the County of Spokane, the largest amount of population and no water master. Which gives a pretty good indication of the priorities that are in existence at DOE.

So that's my request. My request is for you to reprioritize. Now, I know that's the hardest thing we do. It's the hardest thing I do is prioritizing my time, my resources, my energy. But I think it's time. It's way past time that we organize and reorganize and reprioritize our

PH-6

PH-7

PH-6. See response to PH-5.

PH-7. The issuance of these permits will begin the process of cleaning up the Spokane River and Lake Spokane.

PH-7 (con'd)

efforts to clean up the Spokane River

Thank you.

THE HEARINGS OFFICER: Thank you.

Larry Elmose followed by Michael Chappell.

MR. LARRY ELMOSE: My name is Larry Elmose. I'm here tonight to testify on behalf of those I work for, work with and who I work for, Inland Empire Paper. My address is 560 North Moose Street, Rathdrum, Idaho.

I've been working at Inland Empire Paper for almost 18 years and came from a failing lumber industry where I was employed for 11 years at Louisiana Pacific in Post Falls, which is no longer in business, partly because of environmental issues.

I started working at Inland Empire Paper with no knowledge of the paper making process. I associated paper mills with that odd smell similar to French Town or Lewiston. I soon found out that Inland Empire Paper uses a different process to produce paper. And one that uses waste products from around the region which creates jobs, and has been doing it for almost a hundred years.

As millwright at the mill, I've been involved in several major projects to increase the efficiency of the mill, including a new paper machine and a pulp mill, both with technologies to produce paper with a lower impact on the environment and lessens our carbon footprint, all of

which I am concerned with.

I've also worked on many of the trials and processes the company has implemented into the various areas of the mill to help improve the environmental impact on the water, the land, and the air Inland Empire Paper uses. I understand millions have been spent on these projects without compulsion. Which shows me the responsibility and the commitment Inland Empire Paper has to do that which is right for our region and for the environment.

Along with 137 employees that work at Inland Empire Paper, countless others have been involved in the above mentioned projects, all of which have given a boost to our region's economy. I am proud to be an employee of Inland Empire Paper Company. I have personally seen the commitment of the company to ensure the protection of the environment in our area.

Inland Empire Paper sits along the beautiful Spokane River and has for years. It has and will be committed to its protection and safety for as long as it stands. I know it will. In fact, I'm counting on it, just as many others are.

I'm thankful to have a good paying job with benefits. I see so many out of work and struggling to stay afloat. I see others just getting by. Inland Empire Paper is one of the top paying companies in the region with a secure future.

COMMENTS TO NPDES WA-0000825, INLAND EMPIRE PAPER	RESPONSES
PH-8	PH-8. The final permit includes language that enables the facility to meet their final limits with delta elimination options. These options include accounting for phosphorus bioavailability, trading to reduce nutrient levels consistent with Ecology's Water Quality Trading Framework, pollutant equivalency, and implementation of a multi-facility bubble limit for nutrients.

I don't have to worry what I will have to, what I will be doing in a month from now or a year from now. And that gives me peace of mind. I want this kind of job for my children and for my grandchildren.

One day this great nation will be like it was. We all need to work together for the good of its citizens. I want to feel secure in my future, just as everyone else does. I hope the agencies will find a sound solution for Inland Empire Paper, one that will ensure our future and the future of generations to come.

Thank you.

THE HEARINGS OFFICER: Thank you, very much.

Michael Chappell followed by Sean Hackett.

MR. MICHAEL CHAPPELL: Thank you. My name is Michael Chappell. I'm the Director of the Environmental Law Clinic at Gonzaga. I'm appearing tonight on behalf of Spokane Riverkeeper, the Lands Council, and Kootenai Environmental Alliance. My address is 721 North Cincinnati Street, Spokane, 99220.

My comments tonight, probably no surprise to those people in the room who know me, are gonna focus mainly on PCBs. I'm also gonna talk briefly about compliance schedules and delta elimination. We are gonna provide written comments that are gonna go into far more detail. I just want to go through just what we're gonna discuss in

COMMENTS TO NPDES WA-0000825, INLAND EMPIRE PAPER	RESPONSES

written comments.

First, PCBs. I have to, as an aside I'll say I was not heartened by the discussion that occurred tonight on what Ecology's plan is for PCBs. In my opinion and the opinion of the environmental groups that my clinic represents, these permits do a major disservice to the environmental groups, do a disservice to the people that use the Spokane River, the people that want to fish and eat out of the Spokane River. And probably most importantly, this permit, these permits in regards to PCBs do a disservice to the dischargers that are gonna rely on the regulatory agency to issue legal permits what won't have, that leave them open for further litigation.

PH-9

My clients and I consistently said, we said at the Spokane River Forum, we said all along in private and public meetings that if these permits do not include water quality based effluent limits that create a true path to cleaning up PCBs in the Spokane River, we are gonna sue the Department of Ecology. We are not -- unfortunately, what came out did not heed that warning.

PH-10

Now, the side effect of that is you have also left, you've left Liberty Lake, City of Spokane, Inland Empire Paper, not Kaiser, because Kaiser's a slightly different realm, because you actually have performance limits in the, in the permit. But you've left these dischargers in an

PH-9. Ecology believes the permit does include limits that will protect receiving water quality in the Spokane River; and specifically addresses the PCB 303(d) listings in the Spokane River and Lake Spokane.

Based on comments received, the final permit adds an expected time frame for setting a performance based PCB effluent limit in this permit cycle (after 18 months after permit issuance). This effluent limit in combination with the best management practices for PCB source identification and reduction will ensure the discharge will improve, not worsen, the PCB conditions in the Spokane River. These measures will result in definitive first steps to bring the Spokane River and Lake Spokane into compliance with the water quality standards for PCBs.

Ecology has increased the PCB monitoring frequency from once/quarter to once/every 2 months, for the first eighteen months of the permit. This will allow Ecology to set the numeric limit after this initial data collection period.

PH-10. Ecology believes the PCB monitoring, commitment to set a performance based PCB effluent limit within this permit term, and PCB BMP source identification and reduction plan take definitive first steps in meeting receiving water quality criteria.

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untenable situation where they are going to be open to litigation from environmental groups the day these permits hit.

PH-11

The requirements for the Clean Water Act clearly states if the Department of Ecology understands that there is a problem and an issue, the exact language is Ecology has a duty to determine if the discharge will cause or contribute to violations to water quality standards. Once that determination is made, pursuant to 40 CFR 122.44, Ecology must calculate the water quality based effluent.

PH-12

Washington Supreme Court has already ruled on this in Port of Seattle vs Pollution Control Hearings Board. They explained, 1) NPDES permits must be, may be issued only where the discharger in question will comply with State water quality standards. 2) Effluent limits, in turn, 33 USC 1311(e)(1)(C) requires effluent limits to comply with state water quality standards

PH-13

And finally, 40 CFR 122.44 requires State issued NPDES permits to contain conditions requiring compliance with water quality standards.

Again, right now, unless you put water quality based effluent limits in these permits, these dischargers are going to be open to a lawsuit. What that lawsuit will say is you are required under the law to meet water quality based effluent -- I'm sorry. You are required to meet water

PH-14

PH-11. Ecology believes the permit does include limits that will protect receiving water quality in the Spokane River; and specifically addresses the multiple 303(d) listings of the Spokane River.

PH-12. Comment noted. See response to Comment PH-10.

PH-13. Comment noted. See response to Comment PH-10.

PH-14. Comment noted. See response to Comment PH-10.

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quality standards.

We've just had a discussion here tonight. We know that that's not occurring. Unless you put water quality based effluent limits in these permits, the dischargers cannot get compliance schedule. And the minute that these permits are adopted, they're gonna be open to legal challenges. Not just Ecology but permittees, as well.

PH-15

You're doing a disservice to the, to the dischargers. You need to come up with water quality based effluent limits that address PCBs that put us on a path to recovery.

The idea that somehow we have a paucity of data is a joke. We have been studying this for 30 years. The PCB TMDL goes back, it lists 21 different studies that have been done since 1980 regarding PCBs in the Spokane River. There is no doubt we have an issue. We know it's a problem. We know the dischargers in question are violating water quality standards now. It is Ecology's duty to make sure that these permits include water quality based effluent limits.

PH-16

This is a -- everybody here's aware, this is a 303 U.S.A. water body. It's impaired for PCBs. We need to address it. The environmental groups that I represent have said over and over again to the Department of Ecology you need to address PCBs. The fact that you have made it a calculated decision to only look at DO and phosphorous in the last 13 years is, again, a disservice to the

PH-17

PH-15. Comment noted. See response to comment PH-10.

PH-16. Comment noted. See response to comment PH-10.

PH-17. Ecology disagrees. Ecology has not ignored the PCB problem in either the proposed permit or final permit. As explained in response to comments PH-9 and PH-10, the final permit increases initial PCB effluent monitoring with an expected timeframe for setting a performance based PCB effluent limit. The permit also establishes best management practices (BMP) plan for PCB source identification and reduction.

The performance based numeric limit, in addition to the BMP plan, will ensure the discharge will improve, not worsen, the PCB conditions in the Spokane River. Further, these requirements take definitive first steps to bring the Spokane River and Lake Spokane into compliance with the water quality standards for PCBs.

COMMENTS TO NPDES WA-0000825, INLAND EMPIRE PAPER	RESPONSES

environmental groups and to the members that use that river and people that want to go back in that river safely and eat the fish and use the river in the manner in which it's intended, water contact recreation.

PH-17 (con'd)

So my comment, I guess, is use the 30 years of data that you have. Draft water quality based effluent for PCBs. That will allow the dischargers to receive a compliance schedule. Again, without that compliance schedule, these dischargers are gonna be in violation of the Clean Water Act the day these permits are adopted. They're in violation now.

PH-18

The hope was, the hope by the environmental group was Ecology had heard the warning from the environmental group, and they were going to be willing to address this issue. Right now you punted on it. And that's not acceptable to these groups.

I'm briefly gonna talk, like I said, about the compliance schedules. We're gonna have much more detailed comment when we get to, when we provide written comments. The tentative compliance schedule that you include in the permits is inconsistent with federal law. Those that want to point to Washington law and say, well, Washington has a 10 year compliance schedule in the WAC, let's be clear here, the Clean Water Act federal statute says these federal permits must comply with federal law.

PH-19

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PH-18. See responses to comments PH-9 and PH-10.

PH-19. The State's Water Quality Standards allows for schedules of compliance, see WAC 173-201A-510 (4). These schedules of compliance "may in no case exceed ten years, and shall generally not exceed the term of any permit", WAC 173-201A-510 (4)(c).

Similar to the Federal Rules which state schedules of compliance "shall require compliance as soon as possible", the State WQ Standards also specify that "schedules of compliance shall be developed to ensure final compliance with all water quality-based effluent limits in the shortest practicable time", WAC 173-201A-510(4)(a). Ecology has set a 10 year compliance schedule considering the complexities of the dissolved oxygen problem in the Spokane River and the nature of the solution. For the Spokane River dischargers, implementation of treatment technology alone may not achieve the final WQBELs for ammonia, CBOD, or total phosphorus. In this case, the Permittees will rely on 'delta elimination' to meet their final limits. The 'delta elimination' options may include an accounting for bioavailable phosphorus, pollutant equivalency, water quality offsets, and water quality trading. With the uncertainties associated with the treatment technologies and delta elimination options, the Department believes the Permittee needs the 10 year compliance schedule specified in the final permit.

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State law allows you to be more stringent than the federal, the federal guidelines and federal standards. You can't be less stringent. The Ninth Circuit's already ruled on this. Ninth Circuit in Citizens for a Better Environment vs Union Oil Company of California have already stated, let me quote it, There's a five year duration on the life of an NPDES permit that the effective modification asserted here would violate.

That effective modification was a cease and desist order that included a compliance schedule that's longer than the five year length of the applicable NPDES permit. And the court determined it could not be included in the permit, because it purported to extend a compliance schedule beyond the term of employment. So my comment is Ecology needs to

PH-20 explain how the 10 year compliance schedule is consistent with the Clean Water Act, consistent with federal law.

My last comment is on the delta elimination. Again, for those that are in the room that sit on the same advisory committee, or go to the advisory committee meetings that I go to, I think I said this consistently, and the environmental groups have said it consistently, the Clean Water Act is silent when it comes to nutrient trading.

I know there's state, the state WAC at least has

PH-21 guidelines for implementing offsets. My major comment is I would note, and we have said this in prior written comments,

PH-20. See response to comment PH-19.

PH-21. Presently, Ecology and the Spokane River DO TMDL Implementation Advisory Committee is developing a Water Quality Trading Framework that will clarify the use of offsets and pollutant trading. Ecology has also added language to the compliance schedule (Special Condition S5) specifying that the delta elimination may include any approved trades consistent with the Water Quality Trading Framework.

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PH-21 (con'd)

the WAC says the water quality offset occurs where a project proponent implements or finances the implementation of controls for point or non-point sources to reduce the level of pollution for the purposes of creating sufficient simulated capacity to allow, and this is the key, new or expanded discharges.

Right now the Clean Water Act requires end of pipe discharges that meet applicable water quality standards, meet applicable technology based effluent limits. There's nothing in the Clean Water Act that allows dischargers to receive the offsets. While some environmental groups have

PH-22

agreed to listen, and I represent many of those, I will note that not all the environmental groups are sitting at that table. And I think it's, it's important here that Ecology ensures that they make it clear to the dischargers that there is a potential that they may have to meet end of pipe limits. And they need to plan for that accordingly.

Again, you're doing a disservice to the dischargers by telling them that somehow there's a 10-year compliance schedule out there, you're gonna have 10 years in order to

PH-23

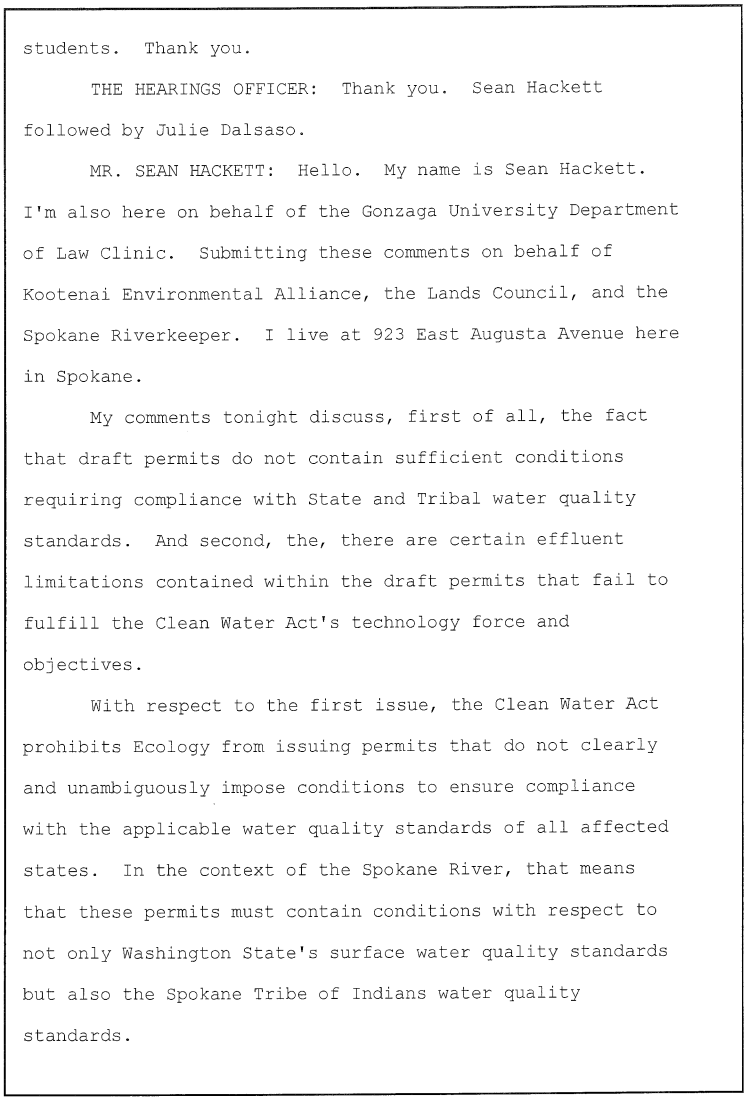
meet these limits when there's a very real possibility that that 10-year compliance schedule into a 5-year compliance schedule, and that these nutrient offsets that are out there may not be legal.

I'm gonna turn over the rest of my time to one of my

PH-22. Again, the Spokane River DO TMDL Implementation Advisory Committee is developing a Water Quality Trading Framework that will clarify the use of pollutant trading, including offsets. The Framework will address all aspects of trading, from what qualifies as a trade, how Ecology will track trades, and how Ecology will determine compliance using credits obtained from pollutant trading.

Ecology plans to recognize the use of trading, including offsets, as a means to comply with a Permittee's final water quality based effluent limits.

PH-23. See response to PH-19 and PH-22.

COMMENTS TO NPDES WA-0000825, INLAND EMPIRE PAPER	RESPONSES
	PH-24. See response to comment PH-9. Ecology believes the permit does include limits that will protect receiving water quality in the Spokane River and Lake Spokane; and specifically addresses the multiple 303(d) listings of the Spokane River and Lake Spokane.

students. Thank you.

THE HEARINGS OFFICER: Thank you. Sean Hackett followed by Julie Dalsaso.

MR. SEAN HACKETT: Hello. My name is Sean Hackett. I'm also here on behalf of the Gonzaga University Department of Law Clinic. Submitting these comments on behalf of Kootenai Environmental Alliance, the Lands Council, and the Spokane Riverkeeper. I live at 923 East Augusta Avenue here in Spokane.

My comments tonight discuss, first of all, the fact that draft permits do not contain sufficient conditions requiring compliance with State and Tribal water quality standards. And second, the, there are certain effluent limitations contained within the draft permits that fail to fulfill the Clean Water Act's technology force and objectives.

With respect to the first issue, the Clean Water Act prohibits Ecology from issuing permits that do not clearly and unambiguously impose conditions to ensure compliance with the applicable water quality standards of all affected states. In the context of the Spokane River, that means that these permits must contain conditions with respect to not only Washington State's surface water quality standards but also the Spokane Tribe of Indians water quality standards.

PH-24

COMMENTS TO NPDES WA-0000825, INLAND EMPIRE PAPER	RESPONSES

Unfortunately, these draft permits are deficient in this regard. Not only do the permits fail to clearly establish conditions designed to ensure compliance with the State surface water quality standards, but the permits, themselves, are completely devoid of any discussion of Tribal water quality standards. And to the extent that fact sheets discuss Tribal water quality standards, that's irrelevant. Because the information contained within the fact sheet is not an enforceable current condition.

Not only is this problematic because it seriously calls into question the legal sufficiency of these permits, but it leaves the public uncertain as to whether these permits will be sufficiently protective of one of our community's most prided resources, the Spokane River.

In order to cure this deficiency and allay concerns of the public, permits should be revised to include language that explicitly requires dischargers to comply with applicable State and Tribal water quality standards, including an explicit reference and a duty to comply with 40 Code Federal Regulation Section 122.44(d)(1). We would recommend that this provision be located within the discharge limitation sections of each of the permits and appropriately throughout the remainder of the permits.

Second issue, the draft permits' effluent limitation do not fulfill the Clean Water Act's technology enforcing

PH-25 PH-26 PH-27 PH-28 PH-29

PH-25. Ecology disagrees. See response to comments PH-9 and PH-24.

PH-26. For PCBs, the draft Spokane River PCB TMDL fully describes the analysis for meeting tribal water quality standards. At this point in time, Ecology believe PCBs are the only pollutants that cause and contribute water quality criteria exceedences of the Spokane Tribe of Indian waters.

PH-27. See response to comments PH-9 and PH-24.

PH-28. Ecology believes the permit complies with 40 CFR Part 122.44(d)(1); the requirement that NPDES permits must include limitations to meet State Water Quality Standards, including narrative standards conditions.

The permit includes limits that will protect State and Tribal receiving water criteria; and specifically addresses the multiple 303(d) listings of the Spokane River and Lake Spokane. The permit includes water quality based effluent limits for metals (cadmium, lead and zinc), and dissolved oxygen demanding pollutants (CBOD, ammonia and total phosphorus).

The final permit also includes PCB effluent monitoring, sets a timeframe for developing a performance based PCB effluent limit and establishes best management practices for PCB source identification and reduction. These measures take the definitive first steps to bring both State and Tribal waters into compliance with PCB receiving water criteria.

PH-29. The Clean Water Act directed EPA to develop standards of performance (effluent limitations) for industrial categories, which included the following:

BPT - Best Practicable control Technology currently available - applicable to conventional pollutants - to be achieved by July 1, 1977;

BCT - Best Conventional pollutant control Technology (BCT) - the level of treatment that succeeds BPT for conventional pollutants. The deadline for achieving BCT was July 1, 1984 but was changed in the 1987 CWA amendments to March 31, 1989

-continued on next page-

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Unfortunately, these draft permits are deficient in this regard. Not only do the permits fail to clearly establish conditions designed to ensure compliance with the State surface water quality standards, but the permits, themselves, are completely devoid of any discussion of Tribal water quality standards. And to the extent that fact sheets discuss Tribal water quality standards, that's irrelevant. Because the information contained within the fact sheet is not an enforceable current condition.

Not only is this problematic because it seriously calls into question the legal sufficiency of these permits, but it leaves the public uncertain as to whether these permits will be sufficiently protective of one of our community's most prided resources, the Spokane River.

In order to cure this deficiency and allay concerns of the public, permits should be revised to include language that explicitly requires dischargers to comply with applicable State and Tribal water quality standards, including an explicit reference and a duty to comply with 40 Code Federal Regulation Section 122.44(d)(1). We would recommend that this provision be located within the discharge limitation sections of each of the permits and appropriately throughout the remainder of the permits.

Second issue, the draft permits' effluent limitation do not fulfill the Clean Water Act's technology enforcing

PH-25 PH-26 PH-27 PH-28 PH-29

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PH-29 (con'd). BAT - Best Available Technology economically achievable - applicable to toxic pollutants. The deadline for achieving BAT was July 1, 1983 but was changed by the 1987 CWA amendments to March 31, 1989.

Performance standards also include new source performance standards (NSPS) for new direct dischargers and pretreatment standards for existing indirect dischargers (PSES) and new indirect dischargers (PSNS).

Others have characterized the Clean Water Act as a 'technology forcing statue' in that the Act mandated implementation of the above technologies for industrial discharges. However, Ecology has not interpreted these technology based requirements as meaning that dischargers must continually achieve and improve pollution reduction practices, implemented by more stringent permit limits at each permit renewal.

COMMENTS TO NPDES WA-0000825, INLAND EMPIRE PAPER	RESPONSES

objectives. As you're aware, the Clean Water Act has been characterized as a technology forcing statute because of the increasingly rigorous demands that it imposes on dischargers to continually achieve and improve pollution reduction practices.

Unfortunately, a review of the discharge monitoring reports submitted by Inland Empire Paper Company and Kaiser demonstrates that certain technology based effluent limitations contained within the draft permits provide these facilities with little to no incentives to improve their pollution reduction efforts.

The DMRs indicate that actual discharges from these facilities during high flow season months between January 2008 and March 2010 are substantially less than the technology based effluent limitations contained within the draft permits for these facilities. For example, with, Kaiser's draft permit sets a limit for total suspended solids at 1,142 pounds per day maximum daily, where the DMR indicates that Kaiser's maximum daily discharge rarely exceeds 500 pounds per day. That suggests that these limits are nearly twice as high as they need to be.

Similarly, Inland Empire Paper Company's effluent limits for biological oxygen demand and total suspended solids far exceed what the facility is actually discharging. Our written comments will go into greater detail and provide

PH-30. EPA technology based limitations provides consistent effluent limits for like industrial categories. These limits create a level playing field on a regional, State, and National level. Setting more stringent performance based limits provides an economic disadvantage to facilities which have invested to upgrade/install more advanced wastewater treatment technology compared with other like facilities which have not invested to upgrade their treatment facilities.

In other words, setting more stringent limits than the federal technology based effluent guidelines punishes facilities performing well (those who have invested to improve treatment technology); and rewards those facilities performing poorly (those who have not invested to improve treatment technology).

PH-31. Comment marked, but not related to this permit.

PH-32. See response to comment PH-30.

COMMENTS TO NPDES WA-0000825, INLAND EMPIRE PAPER	RESPONSES

the calculations where we arrived at these numbers.

But the most egregious limit that we were able to identify on IEP's permit was the limit for total suspended solids. Which the permit sets the maximum daily limit at 8,938 pounds per day, while the facility's actual discharge between March 2008 and March 2010 during high flow months was roughly only about 849 pounds per day. This suggests that these limits are nearly 10 times higher than they should be.

PH-33

Given the substantial amount of room that these two facilities, IEP and Kaiser, have to grow into the permit limits, these limitations cannot possibly represent the best pollution control technology for pollution practices. In order to fulfill the Clean Water Act's technology forcing objective, not only should all these permits - not only should all these technology based effluent limitations be more stringent than those contained in previous iterations of these permits, but those limits should be sufficiently stringent so as to not only incentivize improved pollution prevent measures but to force it.

PH-34

PH-35

Just a couple more general comments. The permits for Liberty Lake, City of Spokane and IEP all allow for increased flows. We'd like Ecology to demonstrate and ensure that water quality's adequate to protect existing uses. And we'd also like an explanation of how these

PH-36

PH-33. Ecology has re-evaluated its calculations for TSS and BOD limits during the high flow season. In the draft permit, Ecology used the BCT guidelines for the mechanical pulp process which existed at the site prior to promulgation of effluent standards, and NSPS guidelines for the deink pulping process installed after promulgation of the effluent standards.

Ecology has re-calculated technology based limits using NSPS guidelines for the increase in mechanical pulp production over the last permit cycle. Ecology used an 'existing' groundwood pulp production of 198 tons/day based on values from the 1998 fact sheet. The 198 tons/day consisted of 52.25 and 145.75 tons/day of groundwood from the Course Molded News (CMN) and Chemi-Mechanical Pulp (CMP) subcategories, respectively. EPA combined the Groundwood CMN and CMP subcategories into Mechanical Pulp subcategory in their latest revision to the Pulp, Paper, and Paperboard Effluent Guidelines.

The resulting production values, effluent guidelines, and effluent limits are shown at the front of these response to comments.

PH-34. See response to comments PH-29 and PH-30.

PH-35. See response to comment PH-29.

PH-36. The permit protects existing beneficial uses of the receiving water by ensuring compliance with receiving water quality criteria; and by brining the receiving water back into compliance with applicable water quality criteria.

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PH-37

PH-38

increased flows will be consistent with the state's anti-degradation policy.

And just a quick, quick note on IEP's permit. They lack internal limits for ammonia, CBOD. And they also don't contain achievement dates for certain interim limits.

Thank you for your time.

THE HEARING OFFICER: Thank you.

Julie Dalsaso.

MS. JULIE DALSASO: Good evening. My name is Julie Dalsaso, Coeur d'Alene, Idaho. I want to speak in general terms and leave the details to the science experts in the room.

Thanks for the opportunity to share my concerns about discharge permits on the Spokane River. The experience I've gained regarding opportunities to improve water quality on the Spokane River have been worthwhile. Some of them have been learned through the grant that Department of Ecology provided with the Spokane River Forum. And I really appreciated those gatherings.

Yet the processes are quite different in terms of the TMDL phosphate dischargers in my experience on the Idaho side and the Avista dam licensing processes. However, what remains similar is a long arduous process to finalize the permit regulations. The differed time in gathering data for possible modeling future consequences, industry versus

PH-37. Tier 2 Antidegradation requirements apply to new or expanded actions that result in a measurable decrease in receiving water quality. Inland Empire Paper Company recently modernized their thermo-mechanical pulping equipment that qualified as an 'expanded action'. However, Ecology concluded the modernization would not cause a measurable decrease in receiving water quality at the edge of the chronic mixing zone boundary. Therefore, the facility did not need a Tier 2 Antidegradation analysis.

However, the facility must comply with Tier 1 Antidegradation requirements. Tier 1 ensures existing dischargers maintain and protect the designated uses of the receiving water. Ecology believes the conditions in this permit will protect existing and designated uses of the receiving water. Additionally, the permit takes appropriate and definitive steps to bring the water quality back into compliance with the waters which fail to meet criteria (dissolved oxygen and PCBs).

PH-38. For ammonia, Ecology lacks the data to set a numeric effluent limit. Ecology instead set a non-numeric effluent limit, the ammonia BMP plan (condition S4). After collection of an adequate data set for ammonia, Ecology expects to develop an interim ammonia effluent limit to hold the discharge to current levels.

For CBOD, the numeric limit for BOD will ensure the discharge will not worsen DO conditions in the Spokane River and Lake Spokane.

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health impacts analysis, and the opportunity for citizen input about the Spokane River water quality from a bistate perspective.

As an opportunist and thrifty individual by nature, I see that now is the time to reinforce analysis and regulation for the package of pollutants impacting the Spokane River. Not merely phosphates but also PCB-like substances, PCBs, hydrocarbons and dioxins, apparently traced to the water, or to the waste to energy incinerator.

PH-39

Tonight we see valuable resources allocated for an optimal outcome. But can we afford to partially do the job and avoid review of the full range of pollutants. The identified four polluters need discharge permits for the full range of pollutants, nothing less.

PH-40

Before lawsuits arose from the Idaho's municipal wastewater dischargers with the TMDL plan ultimately was stall tactics and deferred enforcement dates made the end point of the discharge permitting process seem highly unlikely. It just seems to wear everybody down while the health of the river continues to degrade.

Given the legal implications, concrete timelines seem more and more elusive. Given these complications, the discharge permitting process addressed tonight means we need to be inclusive and get back on track to look at the impact of PCBs and other pollutants in a meaningful comprehensive

PH-41

PH-39. Ecology believes the permit does address all pollutants that may impair receiving water quality criteria, including metals (zinc, lead, cadmium), dissolve oxygen demanding pollutants (CBOD, ammonia and total phosphorus), and PCBs.

PH-40. See response to comment PH-39.

PH-41. See response to comment PH-39.

COMMENTS TO NPDES WA-0000825, INLAND EMPIRE PAPER	RESPONSES

PH-41 (con'd)

method versus fragmenting our sights on merely the phosphates.

Lastly, though I'm not a scientist and have more of a human health focus as a health care professional, data used to derive predictions from modeling needs to be current and

PH-42

objective. Garbage in, garbage out. There are concerns that data is unreliable that was used, outdated and possibly skewed to achieve justifiable pollution. Only the experts can review the data for clear objective findings. Plus, with time and both industry and population increases in

PH-43

effluent loads into Spokane River, projections need to be considered of the future loads.

Thank you.

THE HEARINGS OFFICER: Thank you.

Does anybody else wish to comment at this time?

(No response)

Okay. Well, the formal hearing does not end until 9:00 o'clock. So for those of you who wish to go, please do so. But we'll be hanging around until 9:00 to make sure all testimony is recorded in. Thank you.

(7:40 p.m.)

THE HEARINGS OFFICER: So let the record show testimony ended at 7:40 p.m. No other people wishing to testify have shown up to testify since that time. And so we're gonna be closing the hearing now. If you would like

PH-42. Ecology believes the DO model provides a reasonable representation of the key processes affecting dissolved oxygen in the Spokane River and Lake Spokane.

PH-43. Ecology developed the WLAs for oxygen demanding pollutants considering future flows for both the municipal and industrial dischargers.

to email or send written comments, they must be submitted by 5:00 p.m. on November 17, 2010. Submitted to Water Quality Permit Coordinator at the Washington State Department of Ecology, 4601 North Monroe Street in Spokane, Washington, 99205.

All testimony received at this hearing, along with any written comments submitted by 5:00 p.m. on November 17th will be part of the official record for these four draft permits.

After the comment period, Ecology staff will review all comments submitted and prepare a response. The responsiveness summary will be a part of the permit, which will be available online.

On behalf of the Department of Ecology, we thank you for coming. I appreciate your concern and cooperation and courtesy. Let the record show this hearing was adjourned at 8:50 p.m.

STATE OF WASHINGTON)
: ss: REPORTER'S CERTIFICATE
COUNTY OF SPOKANE)

I, Rita A. Ketza, a notary public in and for the State of Washington, do hereby certify:

That the foregoing Public Hearing was taken on the date and at the time and place as shown on Page 1 hereto;

That the foregoing is a true and correct transcription of my shorthand notes of the Public Hearing transcribed by me or under my direction;

WITNESS my hand this 20th day of November 2010.

RITA KETZA
CCR No. 2136,
Notary Public in and for the
State of Washington, residing
at Spokane.

COMMENTS TO NPDES WA-0000825, INLAND EMPIRE PAPER	RESPONSES

SIERRA CLUB
FOUNDED 1892

Upper Columbia River Group

Box 413
Spokane, Washington 99210

November 17, 2010

Permit Coordinator
Washington State Department of Ecology
Eastern Regional Office
4601 N. Monroe St.
Spokane, WA 99205

Re: Comments on Draft NPDES Permits for
Kaiser Aluminum Fabricated Products, LLC (Permit No. WA-0000892)
City of Spokane Riverside Park Water Reclamation Facility and CSOs, and Spokane County (Pretreatment Program) (Permit No. WA-002447-3)
Inland Empire Paper Co. (Permit No. WA-0000892-5)
Liberty Lake Sewer and Water District (Permit No. WA-0045144)

SENT VIA EMAIL (stra461@ecy.wa.gov)

Dear Permit Coordinator,

SC-1 These comments are submitted on behalf of the Upper Columbia River Group of the Sierra Club (Sierra Club), on the Department of Ecology's four draft Spokane River NPDES permits, in particular the draft NPDES permits for Liberty Lake Sewer and Water District, the City of Spokane, Kaiser Aluminum, and Inland Empire Paper (IEP). Please include these comments as part of the administrative record for all four draft NPDES permits. Please also include, by reference, our comment letter dated November 13, 2007, including attachments, on prior drafts of these four permits.

Sierra Club has dedicated significant time and resources to protect and restore the Spokane River, including participation in all aspects of the development of the TMDLs for the Spokane River. Sierra Club interests include protection of public health, restoration of wild redband trout populations, protection and enhancement of public use of Riverside State Park (including elimination of noxious odors in the Park and downstream of City of Spokane's sewage treatment plant), and achievement of a healthy river that benefits Spokane's economy and quality of life.

These permits are important steps toward implementing these TMDLs. Accordingly, we would like to continue to work closely with Ecology toward the finalization of these permits. There is no question that sewage and industrial discharges are among the greatest threats to these goals. Therefore, it is imperative that the Washington Department of Ecology and the U.S. Environmental Protection Agency issue NPDES permits that are fully protective of the public interest and designed to achieve water quality standards in the near term. The lengthy delays in adoption of appropriate TMDLs and administrative extensions of these permits make it all the more important that the responsible agencies "get it right".

The Spokane River is listed on Washington's §303(d) list for a number of parameters, including dissolved oxygen, total dissolved gas, PCBs, temperature, and dioxin. Designation of a waterbody pursuant to § 303(d) means that current wastewater technologies and other pollution control activities, such as Best Management Practices (BMPs) for non-point sources, are insufficient to protect the health of the River and that more stringent measures must be applied to meet water quality standards. 33 U.S.C. §§ 1313(d),

SC-1. Ecology will consider comments received on this permit during this public comment period only.

COMMENTS TO NPDES WA-0000825, INLAND EMPIRE PAPER	RESPONSES
SC-2 1329; 40 C.F.R. § 130.7. As a result, Ecology must ensure that these permits include effluent limits for PCBs, ammonia, phosphorus, temperature, dioxin, CBOD, and other parameters that will be protective of Washington's and the Spokane Tribe's water quality standards.	SC-2. Ecology believes the permit does include limits that will protect receiving water quality in the Spokane River; and specifically addresses the multiple 303(d) listings of the Spokane River. The permit includes water quality based effluent limits for metals (cadmium, lead and zinc), and dissolved oxygen demanding pollutants (CBOD, ammonia and total phosphorus). The final permit also specifies PCB effluent monitoring with an expected timeframe for setting a performance based PCB effluent limit; and establishes best management practices for PCB source identification and reduction.
SC-3 Before proceeding with the comments, it must be noted that Sierra Club has substantial concern with the draft dissolved oxygen TMDL, which these permits reference. Sierra Club has submitted substantial comments on the draft TMDLs. The Idaho dischargers have challenged the final dissolved oxygen TMDL. If significant alterations are made to the DO TMDL, Sierra Club specifically requests that Ecology resubmit the NPDES permits for public review and comment. This would allow the public to review the permits in light of the most up-to- date information and any revisions to the TMDL.	SC-3. Comment noted. If Ecology revises the WLAs in the Spokane River DO TMDL, Ecology will make available for public review and comment any subsequent revisions to the Spokane River permits.
(1) Comments on All Four Permits	
SC-4 (1.1) All permits need to be based on the CeQual model for establishing critical river conditions for permit limit calculations in the river during the 1-in-10 year flow year of 2001.	SC-4. Critical flows used to set permit limits varied by the pollutant. Ecology used the 1 in 10 low flow of year 2001 to set water quality based limits for phosphorus, CBOD, and ammonia to protect receiving water dissolved oxygen criteria. For other parameters, Ecology determines compliance with aquatic life criteria using the 7Q10 river flow (7 day low flow with a reoccurrence probability of 10 years); human health criteria using the 30Q5 river low flow (30 day low flow with a reoccurrence probability of 5 years); and human health carcinogen criteria using the harmonic mean river flow.
SC-5 (1.2) All permits must use end-of-pipe water quality-based limits for PCB until a TMDL assigns a WLA in an approved TMDL. NPDES permits should not use technology-based limits or BMPs.	SC-5. Ecology will not include an end-of-pipe limit for PCBs in this permit. Ecology has added language to the final permit stating that once the Permittee collects a sufficient PCB effluent data set, Ecology plans to reopen the permit to establish a performance based PCB effluent limit. This limit, in addition to the BMP plan for source identification and reduction, will ensure the discharge will improve, not worsen, the PCB conditions in the Spokane River. These requirements take definitive first steps to bring the Spokane River and Lake Spokane into compliance with the water quality standards for PCBs.
SC-6 (1.3) Critical river conditions for all permittees must be based on the 2001 parameters estimated from the 2001 calibrated CeQual model for the segment at the discharge point. Those WQ conditions are the best estimate of critical parameters present during a 1 in 10 year flow condition at that location.	SC-6. See response to comment SC-4.
(2) Kaiser Aluminum Fabricated Products, LLC (Permit No. WA-0000892)	
(2.1) Kaiser needs separately monitor PCBs in the process stream and groundwater to prevent dilution and to provide more reliable results.	
(2.2) The use of WQ data from the Spokane River at Riverside State Park is erroneously used to characterize the Spokane River during critical conditions at the Kaiser discharge. This is not appropriate and is misleading.	
(3) Liberty Lake Sewer and Water District (Permit No. WA-0045144)	
(3.1) The Liberty Lake design criteria (as with Spokane's) have not been confirmed to be able to achieve WQ criteria at design flow or to comply with Tier 2 Antidegradation requirements. Although there were known WQ problems with discharge expansion several years ago, the expansion was approved anyway.	
(3.2) Liberty Lake should receive interim performance-based limits to prevent further degradation of the Spokane River and Lake Spokane until such time as DO TMDL implementation demonstrates improvements in water quality.	
(4) Inland Empire Paper Co. (Permit No. WA-0000892-5)	
SC-7 (4.1) Pollutants in the waste stream and listed in the 303(d) list such as PCBs must have limits in the permit. If there is no WLA for the discharge in an approved TMDL, then there is no allowable mixing zone - and end-of-pipe WQ-based limits must be applied.	
SC-8 (4.2) Critical conditions used for Temperature and pH limit evaluation are not well explained in the draft permit. Calculations need to show how the allowable maximum incremental changes were addressed for both parameters.	
SC-10 (4.3) Monitoring frequencies used to calculate permit limits are not the same as required in the permit. They must conform. No justification of the effluent data set transformation or autocorrelation values is given.	

-continued on next page-

COMMENTS TO NPDES WA-0000825, INLAND EMPIRE PAPER	RESPONSES
SC-2 1329; 40 C.F.R. § 130.7. As a result, Ecology must ensure that these permits include effluent limits for PCBs, ammonia, phosphorus, temperature, dioxin, CBOD, and other parameters that will be protective of Washington's and the Spokane Tribe's water quality standards. Before proceeding with the comments, it must be noted that Sierra Club has substantial concern with the draft dissolved oxygen TMDL, which these permits reference. Sierra Club has submitted substantial comments on the draft TMDLs. The Idaho dischargers have challenged the final dissolved oxygen TMDL. If significant alterations are made to the DO TMDL, Sierra Club specifically requests that Ecology resubmit the NPDES permits for public review and comment. This would allow the public to review the permits in light of the most up-to- date information and any revisions to the TMDL. **SC-3** **(1) Comments on All Four Permits** **SC-4** (1.1) All permits need to be based on the CeQual model for establishing critical river conditions for permit limit calculations in the river during the 1-in-10 year flow year of 2001. **SC-5** (1.2) All permits must use end-of-pipe water quality-based limits for PCB until a TMDL assigns a WLA in an approved TMDL. NPDES permits should not use technology-based limits or BMPs. **SC-6** (1.3) Critical river conditions for all permittees must be based on the 2001 parameters estimated from the 2001 calibrated CeQual model for the segment at the discharge point. Those WQ conditions are the best estimate of critical parameters present during a 1 in 10 year flow condition at that location. **(2) Kaiser Aluminum Fabricated Products, LLC (Permit No. WA-0000892)** (2.1) Kaiser needs separately monitor PCBs in the process stream and groundwater to prevent dilution and to provide more reliable results. (2.2) The use of WQ data from the Spokane River at Riverside State Park is erroneously used to characterize the Spokane River during critical conditions at the Kaiser discharge. This is not appropriate and is misleading. **(3) Liberty Lake Sewer and Water District (Permit No. WA-0045144)** (3.1) The Liberty Lake design criteria (as with Spokane's) have not been confirmed to be able to achieve WQ criteria at design flow or to comply with Tier 2 Antidegradation requirements. Although there were known WQ problems with discharge expansion several years ago, the expansion was approved anyway. (3.2) Liberty Lake should receive interim performance-based limits to prevent further degradation of the Spokane River and Lake Spokane until such time as DO TMDL implementation demonstrates improvements in water quality. **(4) Inland Empire Paper Co. (Permit No. WA-0000892-5)** **SC-7** (4.1) Pollutants in the waste stream and listed in the 303(d) list such as PCBs must have limits in the permit. If there is no WLA for the discharge in an approved TMDL, then there is no allowable mixing zone - and end-of-pipe WQ-based limits must be applied. **SC-8** (4.2) Critical conditions used for Temperature and pH limit evaluation are not well explained in the draft permit. Calculations need to show how the allowable maximum incremental changes were addressed for both parameters. **SC-10** (4.3) Monitoring frequencies used to calculate permit limits are not the same as required in the permit. They must conform. No justification of the effluent data set transformation or autocorrelation values is given.	-continued from previous page- SC-7. See response to comment SC-5. SC-8. From the fact sheet, the impact of pH and temperature were modeled using the calculations from EPA, 1988. The input variables were chronic dilution factor 29.7, upstream temperature <20°C, upstream pH 7.9, upstream alkalinity 50 (as mg CaCO3/L), effluent temperature 29.4°C, effluent pH of 5, effluent pH of 9, and effluent alkalinity of 50 (as mg CaCO3/L). Under critical conditions there is no predicted violation of the Water Quality Standards for Surface Waters for temperature and pH at the chronic mixing zone boundary. Receiving water pH increased from 7.90 to 7.91 using a maximum effluent pH of 9.0. The Water Quality Standards allow a pH incremental increase of 0.2 pH units. Receiving water temperature increased from 18.0 to 18.38°C using an effluent temperature of 29.4°C (84.9°F). The Water Quality Standards allow an incremental increase of 1.1°C, calculated by the equation 28/(T+7) where "T" represents the background receiving water temperature. SC-10. The monitoring frequencies used to calculate the permit limits for zinc, cadmium, and lead (1/month) do match the monitoring frequencies specified in the permit (1/month). To calculate performance based effluent limits for BOD, Ecology transformed the daily BOD values using the natural logarithm. This transformation resulted in a normalized data set. Ecology used a computer program to calculate the autocorrelation coefficient of 0.8274.

COMMENTS TO NPDES WA-0000825, INLAND EMPIRE PAPER	RESPONSES
SC-11 (4.4) WQ-based arsenic limits now need to be implemented after more than 10 years of delay. **SC-12** (4.5) Final limits for oxygen demanding pollutants must be placed in the permit and the compliance schedule cannot exceed 5 years in the permit. Any interim limits and compliance schedule exceeding the 5-year maximum permit life must be contained in an administrative order. **SC-13** (4.6) Performance-based limits for interim effluent loading are appropriate for oxygen demanding pollutants, but so long these limits are developed using the correct data evaluation. **SC-14** (4.7) Because implementation of the metals TMDL has been delayed excessively, the metals limits should use end-of-pipe limits as interim until a year of monitoring establishes performance. At that point, most stringent of either performance-based or end-of-pipe limits should become automatically effective per the procedure outlined in the metals TMDL. **SC-15** (4.8) Fecal coliforms are common in undisinfected pulp mill effluent along with opportunistic pathogens. Permit limits consistent with meeting water quality criteria for bacteria must be placed in the permit until quantification of pathogens in IEP effluent is performed by an independent health organization. **SC-16** (4.9) Pulp mill effluent has been well-documented to cause endocrine disruption in fish including rainbow trout, impairing reproductive and other physiological processes. Because a unique native Red-Band Trout population naturally reproduces in the river near the IEP discharge, it is imperative that the effluent not limit this population's recovery which is also being limited by other water pollution and habitat problems. Exposure to pulp mill phytosterols and other chemicals potentially responsible for endocrine disruption may occur for extended periods since it is likely that the warm IEP discharge creates an attractant to fish when the river is coldest in the winter. This pollution impact from IEP discharges must be shown not to cause any toxic effects in the Red-Band Trout population. **(5) City of Spokane Riverside Park Water Reclamation Facility and CSOs, and Spokane County (Pretreatment Program) (Permit No. WA-002447-3)** (5.1) Permit Application The permit application submitted in 2004 is not legally valid or applicable to a 2010 permit. A new permit and evaluation must be submitted on a valid application with up to date effluent characterization. (5.2) Permit Compliance There has been documented dry weather raw sewage overflows, citizen lawsuits and settlements pertaining to permit violations. Statements such as contained in the fact sheet section C. on permit compliance is grossly misleading. The compliance schedule of any court order should also be reflected in the permit conditions (5.3) Design Criteria – Facility Loading (5.3.1) Expansion of the discharge is being permitted as design criteria without an adequate water quality (WQ)-based evaluation at those discharge volumes using the best available river and effluent data representative of critical conditions at design flows. The permit cannot be issued for expanding flows under design criteria without calculating critical conditions, determining reasonable potential, and setting limits under those design criteria flows. If lower flows are being permitted, they must be explicit in the permit. The use of these design flows without the above evaluations for establishing adequate capacity for the City's wastewater treatment in the River is incorrect.	SC-11. As explained in the fact sheet, the proposed permit will defer any arsenic permit decisions until the many regulatory issues with the human health based arsenic criteria are resolved. The USEPA adopted risk-based arsenic criteria for the protection of human health for the State of Washington in 1992. This freshwater criterion is 0.018 µg/L, and is based on exposure from fish and shellfish tissue and water ingestion. This criterion is controversial because it differs from the drinking water maximum contaminant level (MCL) of 10 µg/L. Further, the human health criteria are sometimes exceeded by natural background concentrations of arsenic in surface water and ground water. SC-12. The permit does contain the final water quality based permit limits for oxygen demanding pollutants (special condition S5). The State's Water Quality Standards allows for schedules of compliance, see WAC 173-201A-510 (4). Compliance schedules "may in no case exceed ten years, and shall generally not exceed the term of any permit", WAC 173-201A-510 (4)(c). Ecology believes the Permittee needs the 10 year compliance schedule in the final permit because of the uncertainties associated with the treatment technologies and delta elimination options. SC-13. Ecology believes it used the correct data evaluation procedures to set performance-based limits in this permit. SC-14. Ecology plans to reevaluate performance based limits for metals at the end of this 5 year permit cycle, not within this permit term. SC-15. See response to comment C-10. SC-16. See response to comment C-12.

(5.3.2) Tier 2 Antidegradation rules must be complied with for new or ***expanded*** discharges. There is neither an adequate nor up-to-date evaluation accompanying the newly expanded design flow being permitted.

(5.3.3) No dilution zone is allowable for pollutants which already exceed WQ criteria or have a WLA established by a TMDL. End-of-pipe limits must be established for those pollutants such as PCB. It seems impossible to expand discharges to the stated design criteria while at the same time meeting the strict PCB loading limits that will be required under State and Spokane Tribe's water quality standards. The proposed permit, therefore, is not consistent with State and Federal Laws

(5.4) Effluent Limits

(5.4.1) Ecology has a state of art model with extensive instream monitoring calibration data for the critical river condition year of 2001. There is no need to delay permit analyses since all receiving stream parameters used for calculating effluent limits within mixing zones for all Spokane River permits should use the model WQ output data for the river segment at each outfall. It is arbitrary to use data from one sampling effort in 1998 or the non-critical flow year of 2005 to characterize the river for 2010 permits.

(5.4.2) There is a discussion of new mixing studies showing better dilution, but no definition of the actual dimension of the mixing zones or justification of new dilution ratios.

(5.4.3) Probability dictates that 7Q10 flows are higher than 7Q20 flows. Explanation is need to show how critical conditions flow were calculated.

(5.4.4) The dilution factors presented in the text and explained as based on Appendix D does not correspond to those in Appendix C.

(5.4.5) Interim limits applied during a compliance schedule must prevent further worsening of WQ criteria violations in the river and lake while final limits are implemented. Therefore, the interim limits must be based on performance for the current discharge, not on technology-based treatment standards which would allow much larger loading than is currently being discharged.

(5.4.6) Final Limits that will meet state water quality standards must be incorporated into the permit.

(5.4.7) The chlorine limits have no justification presented for inclusion in the permit. There must be a WQ-based evaluation with critical flows. The smell of chlorinated effluent is present in the river past the Bowl and Pitcher within Riverside State Park downstream of the discharge in the summer. These odors violate the aesthetics portion of the WQ narrative criteria and indicate that there are probable toxic concentrations of chlorinated compounds well downstream of the mixing zone. This needs to be controlled by more stringent permit limits for chlorine, including odor. Any expansion of this discharge under these conditions cannot be permitted.

(5.4.8) Effluent Limits in the permit are different than those justified in the Fact Sheet.

(5.4.9) The critical conditions cited for deriving ammonia limits and citing EPA procedures in Appendix D - *Response to Comments* have no justification and are not consistent with critical conditions used to justify pH limits. It appears that the monthly limit for ammonia was defined without justification.

(5.4.10) The permitted upper pH permit limit sets the critical pH used in the ammonia calculation to protect the river from toxic conditions. It appears that data has been arbitrarily selected to apply at different calculations to develop less stringent limits.

(5.4.11) It has been over 15 years since the arsenic issue for limits has been put on delay. Further delay is not warranted or acceptable under the CWA.

(5.4.12) It is not clear why comparison of effluent limits is done under Section I of the Fact Sheet. Are these related to groundwater?

(5.4.13) Effluent permit limits for CBOD of 30 and 45 don't comply with federal technology-based limits and there is no time period label.

(5.4.14) If CBOD technology limits are established, ammonia limits also must be included to prevent the combination of CBOD and NBOD from exceeding the BOD tech-based limits.

(5.4.15) It is inexplicable how WQ criteria for Fecal coliform can be met below the treatment plant if both A&B outfalls discharge together with technology-base limits for bacteria while the river is listed for fecal bacteria violations.

(5.4.16) Pretreatment program implementation facts for the City and County must be documented as justification that the program will be protective during the term of this permit.

Conclusion

SC-17 | As described above, these four permits have significant deficiencies that must be addressed prior to issuance of final permits. Moreover, in the event that significant changes are made to address these
SC-18 | comments, comments of other parties, or as the result of changes to the TMDL that materially alter the permits, Sierra Club requests an opportunity to comment on those changes.

Please do not hesitate to contact me if you have further questions regarding these comments.

Sincerely,

John Osborn, MD

SC-17. Ecology believes the permit complies with all applicable Federal and State laws and rules, and contains the necessary conditions to both protect receiving water quality and bring the water back into compliance with applicable standards.

SC-18. See response to comment SC-3.

Spokane Tribal Natural Resources
P.O. Box 100 • Wellpinit, WA 99040 • (509) 258-9042 • fax 258-9620

MEMORANDUM

Permit Coordinator
Department of Ecology
4601 N. Monroe
Spokane, WA 99205

RE: Comments on Draft Spokane River NPDES Permits

SENT VIA EMAIL (stra461@ecy.wa.gov) and First-Class Mail

Dear Permit Coordinator:

Please accept these comments on Ecology's four draft Spokane River NPDES permits, which include the Draft Permits for Liberty Lake Sewer and Water District ("Liberty Lake"), the City of Spokane ("Spokane"), Kaiser Aluminum ("Kaiser") and Inland Empire Paper ("IEP"). These comments are submitted on behalf of the Spokane Tribe of Indians ("Tribe") and Tribe's Department of Natural Resources ("DNR"). The Tribe has grave concerns about the four permits in their current form, and strongly opposes their approval as written.

Introduction

The health and well-being of the Spokane River ("River") is a paramount interest of the Tribe. The Tribe is concerned not only with the health of the River within its Reservation, but also with the entirety of the River as it flows through the Tribe's ancestral lands. The Tribe's Reservation was established in 1877, after the Tribe was removed by force from its domain. *Northern Pac. Ry. Co. v. Wismer*, 246 US 283, 288 (1918). The Reservation's southern boundary is set to the south bank of the Spokane River, which was done to protect the Tribe's subsistence and cultural uses of the River. For many decades now, the Tribe's subsistence use of the River has been thwarted by upstream pollution, raised water temperatures, and during certain times of the year portions of the River are uninhabitable for aquatic life due to depressed oxygen levels and high levels of total dissolved gas ("TDG"). Additionally, PCBs and other toxins make fish consumption potentially dangerous to human health and negatively affect the Tribe's use of the River's fishery.

In response to the infringement on the Tribe's fishing, cultural, and agricultural rights in the River, the Tribe applied for and received treatment in the same manner as a state status ("TAS") under the Clean Water Act ("CWA"), 33 U.S.C. § 1377, on July 23, 2002. The Tribe's first water quality standards were approved on April 22, 2003 However, projects to improve water

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quality and control water pollution within the Reservation have not been successful in bringing the River back to health due to upstream pollution and hydropower facilities within the River. Fortunately, for the Tribe, the CWA protects downstream sovereigns in this very situation. The Environmental Protection Agency's ("EPA") regulations require that NPDES permits cannot be issued "when the imposition of conditions cannot ensure compliance with the applicable water quality requirements of all affected States." 40 C.F.R. § 122.4(d). In addition, downstream Tribes and States are free to adopt more stringent standards than upstream States, and the EPA can require that upstream sovereigns comply with the downstream standards. *Albuquerque v. Browner*, 97 F.3d 415, 423-24 (10th Cir. 1996); *See also Montana v. EPA*, 137 F.3d 1135, 1141(9th Cir. 1998). As Ecology is aware, the non-point and point source pollution upstream from Reservation waters causes degradation of the Tribe's water quality. (Final 2010 DO TMDL, P.17). For this reason, the Tribe is very concerned with the permit limits or in some cases lack of permit limits for certain parameters contained in these four draft permits. **ST-1** Unfortunately, improvements in the Tribe's water quality depend almost entirely on improvements upstream. All four of these draft permits, fail to address the major challenges facing the Tribe: low dissolved oxygen during the summer months in portions of the lower arm of the Spokane River and elevated levels of PCBs and other toxins that violate the Tribe's EPA approved water quality standards. The Tribe's goal of preparing Tribal waters for the return of anadromous fish to the Spokane River becomes more and more difficult as some water quality parameters continue on a downward trend due to upstream pollution. Described in detail below are the Tribe's concerns. **1. Dissolved Oxygen** **ST-2** As Ecology is aware[1], the Tribe's water quality standards are not being met for dissolved oxygen during the critical season in several sections of the Spokane River, in particular the Lower Arm.[2] Given this failure to meet the Tribe's water quality standards and the fact that the overwhelming majority of oxygen depleting pollutants originate from these four facilities, any discharge from these facilities has the potential to cause and contribute to violations of the Tribe's standards. Accordingly, the Tribe posits here that the compliance schedules as written, and the lack of final winter discharge limits will, if approved, violate 40 C.F.R. § 122.4(d). The following comments address some of the Tribe's specific concerns regarding Ecology's handling of oxygen depleting pollutants in these four permits. **a. Compliance Schedules** [1] DO TMDL at v, 17, 18, C84-88. [2] Both Ecology and EPA indicate that the Tribe's EPA approved standards may need further interpretation as a reason to ignore the Tribe's standards. Regardless of any interpretation needs, under no circumstances would the Tribe's standards leave portions of the river devoid of ANY oxygen during the critical season, which is the current situation. Page **2** of **7**	ST-1. Ecology has previously addressed how the Spokane River DO TMDL modeling affects downstream Tribal water quality (see the TMDL's Response to Comments, pages C-84 to C-86). In summary, the DO TMDL focused on DO problems in Lake Spokane, upstream of Long Lake Dam. Nonetheless, the implementation of the TMDL will improve water quality in the Spokane Arm of the river. The Tribal Water Quality Standards do not fully define how dissolved oxygen criteria applies to waters of the Spokane Arm (e.g. treatment as a lake or river, and how natural conditions apply to this stretch). Further, model runs indicate that at the no source scenario (no anthropogenic sources of pollution) dissolved oxygen concentrations will decrease to as low as 1 mg/L in the bottom (stratified) portions of the Spokane Arm. It remains unknown if the TMDL improvements will meet Tribal water quality criteria. Again, Ecology believes the permit includes the limits necessary to protect receiving water quality; and specifically addresses the multiple 303(d) listings of the Spokane River. The permit includes water quality based effluent limits for metals (cadmium, lead and zinc), and dissolved oxygen demanding pollutants (CBOD, ammonia and total phosphorus). The final permit also specifies PCB effluent monitoring with an expected timeframe for setting a performance based PCB effluent limit; and establishes best management practices for PCB source identification and reduction. The performance based limit, in addition to the BMP plan, will ensure the discharge will improve, not worsen, the PCB conditions in the Spokane River. Ecology believes these conditions take the appropriate and definitive first steps to bring the Spokane River (including Tribal waters) into compliance with PCB water quality criteria. ST-2. Presently, Ecology is evaluating an extension of the WLAs for oxygen demanding pollutants into the months of January and February. The compliance point for dissolved oxygen criteria will still remain within Long Lake. -continued on next page-

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quality and control water pollution within the Reservation have not been successful in bringing the River back to health due to upstream pollution and hydropower facilities within the River. Fortunately, for the Tribe, the CWA protects downstream sovereigns in this very situation. The Environmental Protection Agency's ("EPA") regulations require that NPDES permits cannot be issued "when the imposition of conditions cannot ensure compliance with the applicable water quality requirements of all affected States." 40 C.F.R. § 122.4(d). In addition, downstream Tribes and States are free to adopt more stringent standards than upstream States, and the EPA can require that upstream sovereigns comply with the downstream standards. *Albuquerque v. Browner*, 97 F.3d 415, 423-24 (10th Cir. 1996); *See also Montana v. EPA*, 137 F.3d 1135, 1141(9th Cir. 1998). As Ecology is aware, the non-point and point source pollution upstream from Reservation waters causes degradation of the Tribe's water quality. (Final 2010 DO TMDL, P.17). For this reason, the Tribe is very concerned with the permit limits or in some cases lack of permit limits for certain parameters contained in these four draft permits. **ST-1** Unfortunately, improvements in the Tribe's water quality depend almost entirely on improvements upstream. All four of these draft permits, fail to address the major challenges facing the Tribe: low dissolved oxygen during the summer months in portions of the lower arm of the Spokane River and elevated levels of PCBs and other toxins that violate the Tribe's EPA approved water quality standards. The Tribe's goal of preparing Tribal waters for the return of anadromous fish to the Spokane River becomes more and more difficult as some water quality parameters continue on a downward trend due to upstream pollution. Described in detail below are the Tribe's concerns. **1. Dissolved Oxygen** As Ecology is aware[1], the Tribe's water quality standards are not being met for dissolved oxygen during the critical season in several sections of the Spokane River, in particular the Lower Arm.[2] **ST-2** Given this failure to meet the Tribe's water quality standards and the fact that the overwhelming majority of oxygen depleting pollutants originate from these four facilities, any discharge from these facilities has the potential to cause and contribute to violations of the Tribe's standards. Accordingly, the Tribe posits here that the compliance schedules as written, and the lack of final winter discharge limits will, if approved, violate 40 C.F.R. § 122.4(d). The following comments address some of the Tribe's specific concerns regarding Ecology's handling of oxygen depleting pollutants in these four permits. **a. Compliance Schedules** [1] DO TMDL at v, 17, 18, C84-88. [2] Both Ecology and EPA indicate that the Tribe's EPA approved standards may need further interpretation as a reason to ignore the Tribe's standards. Regardless of any interpretation needs, under no circumstances would the Tribe's standards leave portions of the river devoid of ANY oxygen during the critical season, which is the current situation. Page **2** of **7**	ST-2 (con'd). Ecology will need to revise the TMDL to incorporate any expanded critical season and new WLAs. Likewise, Ecology will also need to modify the Spokane River permits to include these changes (after the revised TMDL is finalized). These revisions (both TMDL and permits) will require a public notice and comment period.

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ST-3 All four of the Draft NPDES permits contain compliance schedules that fail to comply with federal and state law. IEP and Kaiser state a schedule of compliance as "Ten (10) years after the permit effective date," and Liberty Lake and Spokane are designated as "No later than March 1, 2018 the Permittee must submit a verification that the selected technology(s) have been installed and are optimally functional and ready to comply with effluent limitations presented in permit conditions S1.B and continuously operating." All four of these permits fail at meeting the "as soon as possible' criteria for compliance schedules outlined in the EPA regulations. 40 C.F.R. § 122.47(a)(1). Furthermore, they fail to meet Washington State's own regulations that "such schedules of compliance shall be developed to ensure final compliance with all water quality-based effluent limits in the ***shortest practicable*** time." WAC 173-201A-510(4)(a).	ST-3. The State's Water Quality Standards allows for schedules of compliance, see WAC 173-201A-510 (4). Compliance schedules "may in no case exceed ten years, and shall generally not exceed the term of any permit", WAC 173-201A-510 (4)(c). Similar to the Federal Rules which state schedules of compliance "shall require compliance as soon as possible", the State WQ Standards also specify that "schedules of compliance shall be developed to ensure final compliance with all water quality-based effluent limits in the shortest practicable time", WAC 173-201A-510(4)(a). Ecology has set a 10 year compliance schedule considering the complexities of the dissolved oxygen problem in the Spokane River and the nature of the solution. For the Spokane River dischargers, implementation of treatment technology alone may not achieve the final WQBELs for ammonia, CBOD, or total phosphorus. In this case, the Permittees will rely on 'delta elimination' to meet their final limits. The 'delta elimination' options may include an accounting for bioavailable phosphorus, pollutant equivalency, water quality offsets, and water quality trading. With the uncertainties associated with the treatment technologies and delta elimination options, the Department believes the Permittee needs the 10 year compliance schedule specified in the final permit.
ST-4 Ecology fails to provide any analysis as to why compliance schedules beyond the 5-year permit term are necessary and thereby fails to comply with their own regulations requiring a "case by case analysis" on the need for compliance schedules. *See Id.* Instead, Ecology simply concludes that each discharger will receive a 10-year compliance schedule and even mentions the potential for longer compliance schedules. (RCW 90.48.605 could provide 20-year compliance schedules if it is able to survive EPA and court scrutiny). Furthermore, nothing in 40 C.F.R. 122.4 appears to contemplate the conflicts that could arise when an upstream state seeks compliance schedules for its permitees that do not meet the "as soon as possible" standard. Simply put, these permits by attempting to extend compliance schedules beyond the 5-year term of the permit guarantee that as currently written they will not "ensure compliance" with the Tribe's water quality standards for dissolved oxygen. *See* 40 C.F.R. § 122.4(d).	ST-4. See response to comment ST-3.
ST-5 From the Tribe's perspective the dischargers have been well aware that in the future they would need to decrease or eliminate their discharge of oxygen depleting pollutants and that time has now come. The Dissolved Oxygen TMDL ("DO TMDL") took Ecology close to 10 years to finalize and during that time the dischargers in essence got a free pass and the River suffered. It is infuriating to the Tribe to consider the possibility that Ecology would give the dischargers another 10 years or more to come into compliance with their waste load allocations as designated by the DO TMDL. These compliance schedules, if necessary, must meet the "as soon as possible" standard and meet Ecology's own regulations. The Tribe hopes that Ecology will take seriously the lofty goal of the Clean Water Act, "that the discharge of pollutants into navigable waters be eliminated." 33 U.S.C. § 1251 (emphasis added).	ST-5. See response to comments ST-1 and ST-3.
ST-6 **b. Winter Discharges** Throughout the development of the current version of the DO TMDL the Tribe raised the issue of winter discharge limits of oxygen demanding pollutants with EPA and Ecology. Repeatedly the Tribe was told that although the permits may not contain limits on these pollutants, the by-pass regulations would severely limit the dischargers' ability to significantly ramp up the discharge of TP, CBOD, and NH3-N in the off-season. *See* 40 C.F.R. § 122.41(m). However, the Tribe remains unconvinced that permits with no final limits for the winter months combined with 40 C.F.R. § 122.41(m) provide any protection from significant increases in pollution discharges during those months.	ST-6. A definition of 'pollutants' is 'something that pollutes'. Similarly, a definition of 'pollute' is 'to make unfit for or harmful to living things'. In this permit, Ecology has ensured the discharge will meet receiving water quality criteria. Also, the permit will bring the receiving water back into compliance with applicable criteria for dissolved oxygen and eventually PCBs. By issuing this permit, Ecology is implementing the Clean Water Act's goal 'that the discharge of *pollutants* into navigable water be eliminated'.
ST-7	ST-7. See response to comment ST-2.

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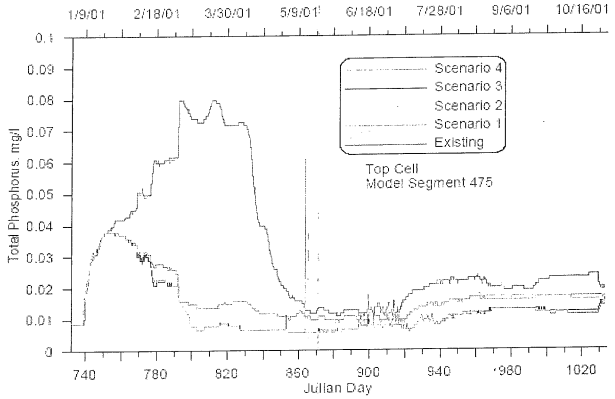
ST-8 As Ecology and EPA are well aware[3] sediment oxygen demand (SOD) is an important influence on the Tribe's decreased oxygen levels during the summer months in portions of the Tribe's waters. Ecology and EPA have attempted to blame the SOD issues on the Grand Coulee Dam and fail to consider that without the pollution from upstream the Tribe's SOD problems would be significantly lessened. For example, the Tribe observes in Lake Roosevelt a much better DO picture then in the Lower Arm of the Spokane River during the summer months and this is due to the lack of upstream discharges of oxygen demanding pollutants north of the Tribe's waters in the Columbia River. The Tribe indicated this difference to Ecology in comments on the Draft DO TMDL and this difference was ignored. In short, upstream pollution causes the Tribe's SOD problems and Ecology chose to ignore this during the modeling by failing to model year round TP limits.[4] The Tribe's modeling as shown below illustrates the significant loading of Tribal waters with TP during the winter months under the current and potential future scenarios.  Figure 89. Scenario total phosphorus predictions for surface layer of segment 430 (station SA2). [3] In the DO TMDL Ecology states: "The modeling report also indicates that reducing sediment oxygen demand (SOD) in the Spokane Arm is the single most important factor in improving water quality in the Spokane Arm; and is, in fact, more important than the reductions required by the upstream TMDL. (P.C48). In the EPA approval letter it is stated as "The modeling report also indicates that reducing sediment oxygen demand (SOD) in the Arm is the single most important factor in improving water quality in the Spokane Arm; and is, in fact, more important than the reductions required by the upstream TMDL." (P. 35). [4] See Email attached as Exhibit 1. Page 4 of 7	ST-8. Ecology did not ignore the comments made by the Spokane Tribe of Indians on the draft DO TMDL (see the TMDL's response to comments on pages C-84 to C-88). See response to comment ST-1 and ST-2.

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ST-9 Winter discharges of these pollutants cause and contribute to the Tribe's SOD problem and low DO levels during the critical months. As currently written the Tribe is convinced that the failure to include final year round limits on TP, CBOD, and NH3-N limits will violate 40 C.F.R. § 122.4(d) by failing to ensure that the Tribe's water quality standards will be met. Nutrients, solids and contaminants continue to settle out in Lake Spokane as well as the Lower Arm during the winter months because the Reservoirs remained filled and flows are diminished with high retention times. Ecology and EPA cannot simply assume that all of the extra pollution discharged into the system simply disappears during the winter months.	ST-9. Ecology is currently evaluating the need for limits for dissolved oxygen demanding pollutants into January and February. See response to comment ST-2.
2. PCBs	
ST-10 As Ecology is aware, these permits must ensure compliance with the Tribe's water quality standards. (Liberty Lake Fact Sheet, P. 12). Unfortunately, these four draft permits fail at even attempting to reduce the PCB discharges from these four facilities and by no means ensure compliance with the Tribe's extremely low limits for PCBs.	ST-10. Ecology believes the permit takes appropriate and definitive first steps to bring the Spokane River and Lake Spokane into compliance with water quality criteria for PCBs. See response to comment ST-1.
a. Draft permits lack PCB discharge limits	
ST-11 The Tribe's current water quality standard for PCBs is 3.37pg/l. As Ecology well understands all four of these facilities, to varying degrees, discharge PCBs into the River.[5] Furthermore, all of these facilities cause and contribute to the violation of the Tribe's water quality standards for PCBs. As stated in the fact sheet for the Liberty Lake Sewer District: "The draft [PCB] TMDL proposed a loading scenario based on meeting the downstream Spokane Tribe water criterion for PCBs of 3.37 pg/l. This scenario requires a 95% PCB load reduction at the Idaho border, a 97% load reduction in the Little Spokane River, and ≥99% reductions in municipal, industrial, and storm water discharges." (Liberty Lake Fact Sheet, P. 12). Unfortunately, instead of dealing with the legal requirements of NPDES permits, Ecology attempts to avoid the issue.	ST-11. Ecology has not avoided the PCB issue in either the draft or final permit. See response to comment ST-1.
ST-12 First, as stated above 40 C.F.R. § 122.4(d) states with no exception that "No permit may be issued when . . . (d) When the imposition of conditions cannot ensure compliance with the applicable water quality requirements of all affected States." The Tribe is considered a State in this instance and all four of these Draft permits utterly fail at ensuring compliance with the Tribe's water quality standards. All of the permits, but one, fail to contain any enforceable numeric limitations and the one that does, Kaiser, is significantly above the Waste Load Allocation within the Draft PCB TMDL with no explanation. (Kaiser Draft Permit, P. 17, compare with Draft PCB TMDL, P. 81).	ST-12. Ecology believes the permit takes appropriate and definitive first steps to bring the Spokane River and Lake Spokane into compliance with water quality criteria for PCBs. See response to comment ST-1.
ST-13 As support for failing to put numeric limitations on PCB dischargers, except Kaiser, Ecology cites EPA regulations, which do not support such a decision. Ecology attempts to invoke 40 C.F.R. 122.44(k) which states, "Best management practices (BMPs) to control or abate the discharge of pollutants when: (1) Authorized under section 304(e) of the CWA for the control of toxic pollutants and hazardous substances from ancillary industrial activities; (2) Authorized	ST-13. The Federal Rule in 40 CFR Part 122.44(k) appears to allow BMPs to control or abate the discharge of pollutants when numeric effluent limitations are infeasible. Such is the case with PCBs discharged from this facility. Ecology lacks up-to-date effluent PCB data to establish a reliable numeric effluent limit. The few historic samples also provide no information on the reduction the Permittee may achieve with an aggressive source identification and reduction effort; or with the next level of treatment necessary for reducing dissolved oxygen demanding pollutants. Ecology has increased PCB monitoring in the final permit and set an expected timeline for setting a performance based PCB effluent limit. This limit, in combination with the PCB BMP plan will ensure the effluent will improve, not worsen, the PCB conditions in the Spokane River.

[5] Table 28 contained in the Draft PCB TMDL estimates t-PCB concentrations for discharges from Liberty Lake at 1121pg/l, Kaiser at 1080 pg/l, Inland Empire Paper at 2544 pg/l, and Spokane at 1364 pg/l. Available at http://www.ecy.wa.gov/pubs/0603024.pdf (last visited Oct. 28, 2010).

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under section 402(p) of the CWA for the control of storm water discharges; (3) Numeric effluent limitations are infeasible; or (4) The practices are reasonably necessary to achieve effluent limitations and standards or to carry out the purposes and intent of the CWA." However, 122.44(k) offers Ecology no support when it comes to failing to provide WQBELs for PCBs in the permits. Even if Ecology legally could utilize BMPs and other narrative criteria for PCBs these permits would still need to comply with 40 C.F.R. § 122.4(d). Unfortunately, BMPs will not by any measure "ensure compliance with the applicable water quality requirements of all affected States."

ST-14

In conclusion, these permits must contain legally enforceable limits on PCB discharges to comply with 40 C.F.R. § 122.4(d) and there is simply no legal reason for Ecology's failure to do so. Although, the Tribe is aware of the political reluctance to deal with PCBs and the difficulties PCB clean-up entails, there simply is no excuse to procrastinate any longer on addressing this pervasive toxin.

ST-15

b. PCB Monitoring Requirements

The PCB monitoring requirements are completely inadequate for Spokane and IEP and are inconsistent with the other two permits with no explanation. Both Spokane and IEP have once a quarter testing of final effluent for PCBs while Liberty Lake has once every other month and Kaiser must test twice a month. Given that all of these facilities discharge significant amounts of PCBs that affect downstream water quality, the Tribe recommends requiring all of the facilities to test twice a month for PCBs in their final effluent.

ST-16

Conclusion

The Tribe has provided comments and input over the many years it has taken to get to this point in cleaning up the River and hopes to see real steps forward in that goal. However, as currently written the Tribe is not convinced that these draft permits move us towards the goal of a healthy and sustainable Spokane River.

ST-17

Sincerely,

B.J. Kieffer
Acting Director
Spokane Tribal Natural Resources Department

Cc: Gregory Abrahamson, Chairman, Spokane Tribe of Indians
Dennis McLerran, EPA, Regional Administrator
Ted Sturdevant, Ecology, Director
Laurie Mann, EPA, Environmental Engineer
Brian Crossley, Spokane Tribe, Water and Fish Program Manager
Ted C. Knight, Attorney for the Spokane Tribe of Indians

ST-14. The permit will take appropriate and definitive first steps in bringing the receiving water back into compliance with receiving water quality criteria for PCBs. See responses to comments ST-1 and ST-13.

ST-15. See response to comments ST-1 and ST-13.

ST-16. Ecology has increased PCB monitoring in the final permit to once every two months for the first eighteen months on the permit term. This increased monitoring frequency will allow Ecology to set a performance based PCB effluent limit within this permit cycle. After the eighteen months, the monitoring frequency will reduce to once per quarter.

ST-17. Ecology disagrees and believes the issuance of these permits will result in real steps forward in cleaning up the Spokane River.

Exhibit 1

Email sent by David Moore on 2/26/2009 (emphasis added)

Ben and interagency work group,
After discussing the hybrid scenario, year round P limits and the swirl of other less recent policy issues, I need to modify my response below (and other Ecology responses on this issue) by stating Ecology feels EPA should refrain from introducing new scenarios this late in the game. We are concerned this complicates our communications with stakeholders and can take us off of our aggressive schedule. In short, we want to lock in to the core scenario and TMDL scenarios we have already discussed and considered as soon as possible and not get sidetracked. We will provide Ecology's position on the numerous policy issues prior to March 25 in order to inform the modeling scenarios but we do not want new scenarios thrown into the mix at this time. Ecology's position on year round P limits is provided below. We feel the former list of modeling scenarios are adequate enough to develop the TMDL and permits. The hybrid and other scenarios may be warranted during TMDL implementation but we need to stay focused on what we have already come up with as a group.

Ecology wants to run the model such that the dual-assessment point sets WLA's at the flat 50 rate (background for County) and see if we meet the target at the upstream assessment point. If we do, we can lower the WLA's post modeling to an achievable limit (in WA) in order to provide a MOS and reasonable assurance in the TMDL. This provides more time to answer the question on what is technically achievable. This also allows the Foundational Concepts document and it's suite of delta elimination actions to stay in place but for more feasible nonpoint source reductions.

Ecology does not support modeling year round P limits at this time in the absence of quantifiable data but we reserve the right to pursue this if it's found to be necessary upon implementation of the TMDL (i.e., we're not meeting the TP target over the first or second permit cycle). We can do this for other unknown impacts, such as stormwater discharges which are not currently modeled.

Thank you for your consideration of these concerns.

Dave

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UNIVERSITY LEGAL ASSISTANCE
721 North Cincinnati Street
P.O. Box 3528
Spokane, Washington 99220-3528
Phone (509) 313-5791
Facsimile (509) 313-5805
TTY (509) 313-3796

Director
LARRY A. WEISER

Office Manager
JULIE CLAAR

Supervising Attorneys
MICHAEL J. CHAPPELL
GEORGE A. CRITCHLOW
STEPHEN F. FAUST
JENNIFER A. GELLNER
GAIL HAMMER
JOSHUA J. KANASSATEGA
ALAN L. McNEIL
TERRENCE V. SAWYER

JAMES P. CONNELLY
MARK E. WILSON
Of Counsel

SENT VIA EMAIL

November 17, 2010

Permit Coordinator
Department of Ecology
N. 4601 Monroe
Spokane, Washington 99205
stra461@ecy.wa.gov

RE: Comments on Liberty Lake, Inland Empire Paper, the City of Spokane, and Kaiser Aluminum Draft NPDES Permits

Dear Permit Coordinator:

These comments are submitted on behalf of the Spokane Riverkeeper, The Lands Council, the Kootenai Environmental Alliance, and the Gonzaga University Legal Assistance Environmental Law Clinic, regarding the Department of Ecology's draft National Pollutant Discharge Elimination System ("NPDES") permits for Liberty Lake Sewer and Water District ("Liberty Lake"), the City of Spokane ("City"), Inland Empire Paper ("IEP"), and Kaiser Aluminum (collectively referred to as the "Dischargers"). We thank you for this opportunity to provide comments on the four draft permits (collectively referred to as the "Draft Permits"). Please include these comments as part of the administrative record for each of the Draft Permits.

As you know, these groups have dedicated significant time and resources to protect and restore the Spokane River, including participation in all aspects of the development and/or implementation of the DO TMDL. The development of appropriate effluent limits in the Draft Permits is a vital component of both implementing the DO TMDL and increasing the amount of dissolved oxygen in the Spokane River and Lake Spokane. Phosphorus, the nutrient with the greatest effects on dissolved oxygen levels along the Spokane River, accelerates the growth of algae and other aquatic plants. This results in reduced oxygen levels which can be harmful to fish and other aquatic species, outbreaks of toxic blue-green algae blooms which can be harmful to human health, and an increased potential for violations of water quality standards. Accordingly, we would like to continue to work closely with Ecology toward the finalization of these permits.

SR-1

The Spokane River is listed on Washington's § 303(d) list for a number of parameters, including dissolved oxygen, total dissolved gas, PCBs, temperature, and dioxin. Designation of a waterbody pursuant to § 303(d) of the Federal Water Pollution Control Act ("Clean Water Act" or "CWA" or "the Act") means that current wastewater technologies and other pollution control activities, such as Best Management Practices ("BMPs") for stormwater and/or non-point sources, are insufficient to protect the health of the Spokane River, and that more stringent measures must be applied to meet Washington State water quality standards. 33 U.S.C. §§

SR-1. Ecology believes the permit does include limits that will protect receiving water quality in the Spokane River; and specifically addresses the multiple 303(d) listings of the Spokane River. The permit includes water quality based effluent limits for metals (cadmium, lead and zinc), and dissolved oxygen demanding pollutants (CBOD, ammonia and total phosphorus). The final permit also specifies PCB effluent monitoring with an expected timeframe for setting a performance based PCB effluent limit; and establishes best management practices for PCB source identification and reduction.

Ecology has added language to the final permit stating that once the Permittee collects a sufficient PCB effluent data set, Ecology plans to reopen the permit to establish a performance based PCB effluent limit. This limit, in addition to the BMP plan, will ensure the discharge will improve, not worsen, the PCB conditions in the Spokane River.

In order to set the PCB performance based limit, Ecology has increased the PCB monitoring frequency from once/quarter to once/every 2 months, for the first eighteen months of the permit. After this initial data collection period, Ecology expects to have sufficient data to set the numeric limit.

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November 17, 2010 Draft NPDES Permit Comments Page 2 **SR-1 (con'd)** 1313(d), 1329; 40 C.F.R. § 130.7. As a result, Ecology must ensure that the Draft Permits include effluent limits for PCBs, ammonia, phosphorus, temperature, dioxin, CBOD, and other parameters that will be sufficiently protective of Washington State's, and the Spokane Tribe's, water quality standards. **General Comments Applicable to Each of the Draft Permits** **1. Permit Limits for PCBs must be Water Quality-Based not Technology or Performance Based.** **SR-2** Section 303(d) of the Clean Water Act, 33 U.S.C. § 1313(d), requires the imposition of a TMDL where technology-based effluent limitations are not stringent enough to implement any applicable water quality standard. 33 U.S.C. § 1313(d)(1)(A). Moreover, the Act prohibits permits for discharges that cause or contribute to an exceedence of water quality standards. 33 U.S.C. § 1311(b)(1)(c); 40 C.F.R. § 122.44(d); 40 C.F.R. § 122.4; *see also*, RCW 90.48.520; WAC 173-226-070. In addition to the conditions established under 40 C.F.R. § 122.43(a), each NPDES permit shall include conditions meeting the following requirements when applicable: Water quality standards and State requirements: any requirements in addition to or more stringent than promulgated effluent limitations guidelines or standards under sections 301, 304, 306, 307, 318, and 405 of CWA necessary to: (1) Achieve water quality standards established under section 303 of the CWA, including State narrative criteria for water quality. 40 C.F.R. § 122.44(d) Ecology's draft PCB TMDL[1] indicates that standards are not being met, that each of the Dischargers contributes to the problem, and that drastic reductions in PCBs are required to meet these standards. The draft PCB TMDL states: A PCB loading scenario was proposed based on meeting the Spokane Tribe water criterion for PCBs (3.37 pg/l). The scenario requires a 95% PCB load reduction at the Idaho border, a 97% load reduction in the Little Spokane River, and ≥99% reductions in municipal, industrial, and stormwater discharges. Draft PCB TMDL at 9. **SR-3** The Draft Permits ignore the 21 separate studies that made up the draft PCB TMDL, and continue to pretend that PCBs can be addressed via BMPs and further monitoring and reporting.[2] [1] Available at http://www.ecy.wa.gov/pubs/0603024.pdf. [2] The exception is the Draft Permit for Kaiser, which contains a performance based limit. The Kaiser draft permit will be discussed in more detail below.	SR-2. Ecology believes the final permit will not cause or contribute to exceedences of applicable receiving water quality standards. See responses to comments SR-1 and SR-3. SR-3. Ecology disagrees. Ecology has not ignored the PCB problem in either the proposed permit or final permit. As explained in response to comment SR-1, the final permit increases initial PCB effluent monitoring with an expected timeframe for setting a performance based PCB effluent limit. The permit also establishes best management practices (BMP) plan for PCB source identification and reduction. The performance based numeric limit, in addition to the BMP plan, will ensure the discharge will improve, not worsen, the PCB conditions in the Spokane River. Further, these requirements take definitive first steps to bring the Spokane River and Lake Spokane into compliance with the water quality standards for PCBs.

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November 17, 2010 Draft NPDES Permit Comments Page 3 **SR-4** Instead of effluent limits, the Draft Permits indicate that, "EPA rules (40 C.F.R. Subpart K (44 FR 32954-5)) do provide for the use of narrative limitations (BMPs) rather than numeric effluent limitations." Ecology's assertion is incorrect. The Fact Sheets appear to be referring to 40 C.F.R. § 122.4(k), which lists circumstances where BMPs may be used to control or abate the discharge of pollutants: (1) Authorized under section 304(e) of the CWA for the control of toxic pollutants and hazardous substances from ancillary industrial activities; (2) Authorized under section 402(p) of the CWA for the control of storm water discharges; (3) Numeric effluent limitations are infeasible; or (4) The practices are reasonably necessary to achieve effluent limitations and standards or to carry out the purposes and intent of the CWA. *Id.* **SR-5** Ecology seems to misunderstand this provision. This provision is intended as a means to implement effluent limitations, which do not currently exist. Alternatively, Ecology must demonstrate that numeric limitations are infeasible. Ecology has not shown that numeric limits are infeasible, and stated at the public hearing that the narrative limits were meant to "buy time" for the Dischargers. Moreover, the Draft Permits do not explain what BMPs exist for PCBs other than monitoring. No BMPs are listed in the Draft Permits. Monitoring alone is insufficient to create a reduction in PCBs. **SR-6** **Recommendation:** To be lawful, the Draft Permits must contain a date certain for achievement of the appropriate WQBELs for PCBs and those WQBELs must be included in all the Draft Permits. As the Environmental Groups explained at the public hearing, this would benefit each of the Dischargers because Ecology could then provide them with a compliance schedule. Without a compliance schedule, each of the Dischargers are open to Clean Water Act citizen enforcement actions, for discharging PCBs in violation of water quality standards. **2. The Draft Permit Does Not Contain Clear Conditions Requiring Compliance with State Water Quality Standards.** Pursuant to the Federal regulations implementing the NPDES program, permit issuers must determine whether a given point source discharge "causes, has the reasonable potential to cause, or contributes to" an exceedance of water quality standards. 40 C.F.R. § 122.44(d)(l)(ii). If a discharge is found to cause, have the reasonable potential to cause, or contribute to such an exceedance, the permit writer must calculate WQBELs for the certain criteria pollutants. 40 C.F.R. § 122.44(d)(l)(i), (iii)-(vi).	SR-4. The fact sheet references the correct cite for BMPs - 40 CFR Part 122.44(k), which is restated below: "In addition to the conditions established in section 122.43 (a), each NPDES permit shall include conditions meeting the following requirements when applicable… (k) Best Management practices (BMPs) to control or abate the discharge of pollutants when: … (3) Numeric effluent limitations are infeasible; …" SR-5. A plain read of the above provision would seem to allow BMPs to control or abate the discharge of pollutants when numeric effluent limitations are infeasible. Such is the case with the PCBs discharged from this facility. Ecology lacks up-to-date effluent PCB data to establish a reliable numeric effluent limit. The few samples also provide no information on the reduction the Permittee may achieve with an aggressive source identification and reduction effort; or with the next level of treatment for CBOD, ammonia, and phosphorus control. When the permittee collects enough effluent PCB data, Ecology expects to set a numeric effluent limit (within 18 months after permit issuance). This limit, in combination with the BMP plan, will ensure that the effluent will improve, not worsen, the PCB conditions in the Spokane River. SR-6. Ecology has not developed appropriate WQBELs for PCBs, so cannot place these in the final permit. Ecology relies on the TMDL process, which considers all sources of PCB pollution (background, point and nonpoint sources) to set the appropriate WQBELs. Ecology will defer the WQBELs until Ecology completes the TMDL and a assigns a WLA (or other conditions) applicable to the Permittee. In the interim, the PCB BMP plan, PCB monitoring requirements, and the upcoming numeric performance based PCB limit takes the definitive first steps to bring the Spokane River and Lake Spokane into compliance with the water quality standards for PCBs.

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  Similarly, in Washington, RCW 90.48.520 requires that: "In no event shall the discharge of toxicants be allowed that would violate any water quality standard, including toxicant standards, sediment criteria, and dilution zone criteria." State NPDES and general permit regulations require permits, "whenever applicable," to include "limitations or requirements" necessary to "meet water quality standards." WAC 173-226-070(3) (a); WAC 173-220-130(1) (b) (i). The Washington Supreme Court, in *Port of Seattle v. Pollution Control Hearings Bd.*, 151 Wash.2d 568, 603 (Wa. 2004), explained this requirement as follows: > NPDES permits may be issued only where the discharge in question will comply with State water quality standards. 33 U.S.C. § 1342(b)(1)(A) requires State-issued NPDES permits to comply with 33 U.S.C. § 1311. In turn, 33 U.S.C. § 1311(b)(1)(C) requires effluent limitations to comply with State water quality standards. In addition, 40 C.F.R. § 122.44 requires State-issued NPDES permits to contain conditions requiring compliance with State water quality standards. 40 C.F.R. § 122.44(d)(1). **SR-7** The Draft Permits fail to clearly establish conditions designed to ensure that discharges do not cause or contribute to violations of water quality standards. Not only is this problematic because it seriously calls into question the legal sufficiency of the Draft Permits, but it leaves the public uncertain as to whether the Draft Permits will adequately protect the chemical and biological integrity of the Spokane River. This deficiency is not cured by the Draft Fact Sheets' acknowledgement that permit conditions must ensure that discharges will meet established water quality standards because the information contained in the Fact Sheets are not enforceable terms of the Draft Permits. **SR-8** **Recommendation:** The Draft Permits must be revised to include language that explicitly indicates the Discharger's obligations to ensure that discharges do not cause or contribute to violations of water quality standards, including an explicit reference to the duty to comply with 40 C.F.R. § 122.44(d)(1). This provision should be located near the beginning of special condition "S1. Discharge Limitations" in the Draft Permits, and/or wherever appropriate throughout the remainder of the Draft Permits. **3. The Permits Lack Lawful Compliance Schedules.** **SR-9** The compliance schedule in the Draft Permits indicate that Dischargers will have to meet final WQBELs for total phosphorus, CBOD, and ammonia ten (10) years after the permits effective date. The compliance schedule does not comply with Federal requirements for compliance schedules. Federal regulations require that any appropriate schedules of compliance "shall require compliance as soon as possible." 40 C.F.R. § 122.47(a)(1). The Clean Water Act defines compliance schedules as "a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with an effluent limitation, other limitation, prohibition or standard." 33 U.S.C. § 1362(17); 40 C.F.R. §	SR-7. Ecology believes the permit includes all conditions necessary to protect receiving water quality standards, see response to comments SR-1 and SR-3. SR-8. Ecology in writing and managing the NPDES program in the State of Washington ensures that dischargers do not cause or contribute to violations of receiving water quality criteria. A discharger's obligation is to comply with the permit as written by Ecology; thus ensuring any permit provisions included per 40 CFR Part 122.44 are met. SR-9. The State's Water Quality Standards allows for schedules of compliance, see WAC 173-201A-510 (4). Compliance schedules "may in no case exceed ten years, and shall generally not exceed the term of any permit", WAC 173-201A-510 (4)(c). Similar to the Federal Rules which state schedules of compliance "shall require compliance as soon as possible", the State WQ Standards also specify that "schedules of compliance shall be developed to ensure final compliance with all water quality-based effluent limits in the shortest practicable time", WAC 173-201A-510(4)(a). Ecology has set a 10 year compliance schedule considering the complexities of the dissolved oxygen problem in the Spokane River and the nature of the solution. For the Spokane River dischargers, implementation of treatment technology alone may not achieve the final WQBELs for ammonia, CBOD, or total phosphorus. In this case, the Permittees will rely on 'delta elimination' to meet their final limits. The 'delta elimination' options may include an accounting for bioavailable phosphorus, pollutant equivalency, water quality offsets, and water quality trading. With the uncertainties associated with the treatment technologies and delta elimination options, the Department believes the Permittee needs the 10 year compliance schedule specified in the final permit.

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  122.2. Federal regulations require that any appropriate schedules of compliance "shall require compliance as soon as possible, but not later than the applicable statutory deadline under the CWA." 40 C.F.R. § 122.47(a)(1). Under CWA, NPDES permits must be fixed for terms not exceeding five (5) years. 33 U.S.C. § 1342(b)(1)(B); 40 C.F.R. § 122.46(a). **SR-10** A compliance schedule longer than a five-year permit term is inconsistent with the compliance schedules defined by the Clean Water Act. *See Citizens for a Better Environment v. Union Oil Co. of Cal*., 83 F.3d 1111, 1120 (9th Cir. 1996); *NRDC v. EPA*, 915 F.2d 1314, 1319 (9th Cir. 1990). In *CBE v. Unocal*, the Ninth Circuit warned against extending the terms of permit's beyond their five-year life span. The Court upheld a district court decision finding that a cease and desist order that provided for a compliance schedule longer than the five-year life of the applicable NPDES permit could not be included in the permit because it purported to extend a compliance schedule beyond the term of the permit. 83 F.3d at 1120. The Court held that, "there is a five-year duration on the life of an NPDES permit that the 'effective modification' asserted here would violate." *Id.* Similar to the compliance schedule at issue in *CBE v Unocal*, the ten year compliance schedule set forth in the Draft Permits attempt to extend the Draft Permits' substantive requirements beyond the five-year limit established by the Clean Water Act. *Id.* **SR-11** Moreover, because Federal requirements for the content of State water regulations provide the statutory minimum, while State standards can only be more stringent, not less stringent, than Federal requirements, the Clean Water Act's more restrictive five-year compliance schedule applies to the Draft Permits rather than Washington's less restrictive ten-year compliance schedule. *See* 33 U.S.C. § 1370. **SR-12** Finally, a review of the Draft Permits' compliance schedules illustrates a significant amount of wiggle room in that they include delta elimination plans that are poorly defined and implicitly recognize that a trading program will be implemented, without specifying how permittees are to engage in such a program and how trades might or might not impact compliance with numeric permit limits. **SR-13** **Recommendation:** Ecology's duty here is to condition the Draft Permits so as to achieve compliance with the appropriate WQBELs for phosphorus and other parameters (PCBs, ammonia, CBOD) as soon as possible and in a manner consistent with both Federal and Ecology regulations. Ecology's attempt to issue a schedule that extends compliance beyond the Draft Permits' five-year fixed-term finds no support in the Clean Water Act, and provides a discharger with too much leeway. In order to ensure that the Draft Permits are consistent with the Clean Water Act and furthers the Act's technology-forcing objectives, Ecology must require compliance with final WQBELs within five years of the Draft Permits effective dates. **4. Antidegradation.** Federal regulations require that Ecology's "antidegradation policy and implementation methods shall, at a minimum, be consistent with the following: (1) Existing instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and	SR-10. The State Water Quality Standards provide for compliance schedules for up to 10 years. Ecology believes State's compliance schedule provisions are consistent with the applicable Federal Rule, see response to comment SR-9. SR-11. Again, the State Water Quality Standards provide for 10 year compliance schedules. Federal rules, in 40 CFR part 122.47, do not include a specific time limit, other than stating schedules should require compliance "as soon as possible". The Department believes a the Permittee needs a 10 year compliance schedule for total phosphorus, CBOD, and ammonia due to the complexities of the Spokane River dissolved oxygen problem and the nature of the solution. SR-12. Ecology added language to clarify the delta elimination plan requirements in the final permit. Through TMDL implementation, the Spokane River DO TMDL Implementation Advisory Committee will further refine the details of delta elimination, including the accounting for bioavailable phosphorus, pollutant equivalency, water quality offsets, and water quality trading. Ecology expects to incorporate these refinements to the delta elimination plan at the five year permit cycle. At a minimum, determinations of compliance with numeric permit limits using delta elimination will not occur for a minimum of 10 years after permit issuance. SR-13. The permit requires compliance with the WQBELs for total phosphorus, CBOD, and ammonia consistent with both State and Federal regulations. Ecology has set a 10 year compliance schedule based the complexities of the Spokane River dissolved oxygen problem and the nature of the solution. See responses to comments SR-9 through SR-12, above.

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protected." 40 C.F.R. § 131.12(a)(1). Only where the quality of waters exceed levels necessary to support the most sensitive biological beneficial uses is the State allowed to degrade water quality in order to accommodate important socioeconomic development. 40 C.F.R. § 131.12(a)(2). Even where these high quality waters exist, a situation present in this case for some pollutants and parameters, the regulations require that Ecology assures water quality adequate to protect existing uses fully. 40 C.F.R. § 131.12(a)(2).

Although providing a very limited exception allowing some degradation in waters "[w]here the quality of waters exceed levels necessary to support" its beneficial uses, those exceptions do not apply to already degraded waters, such as the waters of the Spokane River because of excessive discharges of phosphorus, CBOD, and ammonia. 40 C.F.R. § 131.12(a)(2). In degraded waters, only the first mandate applies – to maintain and protect all existing uses, especially, for example, trout habitat. Accordingly, the regulations prohibit additional pollutant loads of phosphorus, ammonia, CBOD, and PCBs into the Spokane River.

SR-14

Recommendation: Ecology must explain how it has addressed antidegradation in the Draft Permits.

6. Permits must meet Spokane Tribe's Water Quality Standards

The Clean Water Act prohibits Ecology's issuance of NPDES permits "when the imposition of conditions cannot ensure compliance with the applicable water quality requirements of all affected States."[3] The Draft Permits must therefore require compliance with both Washington and the Spokane Reservation's downstream water quality standards because both are considered affected States. Thus, Ecology must consider the water quality standards of both jurisdictions in making permit decisions.[4]

SR-15

In addition, Federal regulations clearly and unambiguously require Ecology to include in these permits any conditions necessary to achieve the Spokane Tribe's water quality standards, including limitations on all pollutants which Ecology determines will cause or have the reasonable potential to cause or contribute to an excursion above the Tribe's water quality standards.[5]

SR-16

Any NPDES permit issued to a discharger in an upstream jurisdiction must include limitations necessary to comply with the water quality standards of a downstream jurisdiction. *Arkansas v. Oklahoma*, 503 U.S. 91, 107 (1992); *see also Montana v. United States E.P.A.*, 941 F. Supp. 945 (D. Mont. 1996); *City of Albuquerque v. Browner*, 97 F.3d 415 (10th Cir. 1996). Unfortunately, the Draft Permits provide no discussion or analysis of compliance with the Spokane Tribe's water quality standards. It is clear from historical data for PCBs and phosphorous at a minimum that the Tribe's water quality standards are not being met. As illustrated below, data from the Tribe indicates alarming low levels of dissolved oxygen at

SR-17

[3] 40 C.F.R. § 122.4 (d).
[4] It is the height of hypocrisy for Ecology to require the Idaho dischargers to meet Washington's downstream water quality standards, but not also require Washington dischargers to meet downstream Tribal water quality standards.
[5] 40 C.F.R. § 122.44(d).

SR-14. As stated in WAC 173-201A-300, the purpose of the State's antidegradation policy is to:

- •Restore and maintain the highest possible quality of the surface waters of Washington.
- •Describe situations under which water quality may be lowered from its current condition.
- •Apply to human activities that are likely to have an impact on the water quality of surface water.
- •Ensure that all human activities likely to contribute to a lowering of water quality, at a minimum, apply all known, available, and reasonable methods of prevention, control, and treatment (AKART).
- •Apply three Tiers of protection (described below) for surface waters of the state.

Tier I ensures existing and designated uses are maintained and protected and applies to all waters and all sources of pollutions. Tier II ensures that waters of a higher quality than the criteria assigned are not degraded unless such lowering of water quality is necessary and in the overriding public interest. Tier II applies to new or expanded actions regulated by Ecology with measurable impacts to receiving water quality. Tier III prevents the degradation of waters formally listed as "outstanding resource waters," and applies to all sources of pollution.

This facility must meet Tier I requirements described above. The permit protects and maintains beneficial uses through implementation of numeric and non-numeric permit limits that prevent additional loading of pollutants of concern (phosphorus, CBOD, ammonia, and total PCBs). The permit further takes appropriate and definitive steps to bring the Spokane River and Lake Spokane into compliance with the water quality standards for both dissolved oxygen and PCBs.

SR-15. Ecology has considered the downstream Tribal water quality standards in developing and issuing this permit. See response to comment SR-18 below for a further explanation.

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protected." 40 C.F.R. § 131.12(a)(1). Only where the quality of waters exceed levels necessary to support the most sensitive biological beneficial uses is the State allowed to degrade water quality in order to accommodate important socioeconomic development. 40 C.F.R. § 131.12(a)(2). Even where these high quality waters exist, a situation present in this case for some pollutants and parameters, the regulations require that Ecology assures water quality adequate to protect existing uses fully. 40 C.F.R. § 131.12(a)(2).

Although providing a very limited exception allowing some degradation in waters "[w]here the quality of waters exceed levels necessary to support" its beneficial uses, those exceptions do not apply to already degraded waters, such as the waters of the Spokane River because of excessive discharges of phosphorus, CBOD, and ammonia. 40 C.F.R. § 131.12(a)(2). In degraded waters, only the first mandate applies – to maintain and protect all existing uses, especially, for example, trout habitat. Accordingly, the regulations prohibit additional pollutant loads of phosphorus, ammonia, CBOD, and PCBs into the Spokane River.

SR-14

Recommendation: Ecology must explain how it has addressed antidegradation in the Draft Permits.

6. Permits must meet Spokane Tribe's Water Quality Standards

The Clean Water Act prohibits Ecology's issuance of NPDES permits "when the imposition of conditions cannot ensure compliance with the applicable water quality requirements of all affected States."[3] The Draft Permits must therefore require compliance with both Washington and the Spokane Reservation's downstream water quality standards because both are considered affected States. Thus, Ecology must consider the water quality standards of both jurisdictions in making permit decisions.[4]

SR-15

In addition, Federal regulations clearly and unambiguously require Ecology to include in these permits any conditions necessary to achieve the Spokane Tribe's water quality standards, including limitations on all pollutants which Ecology determines will cause or have the reasonable potential to cause or contribute to an excursion above the Tribe's water quality standards.[5]

SR-16

Any NPDES permit issued to a discharger in an upstream jurisdiction must include limitations necessary to comply with the water quality standards of a downstream jurisdiction. *Arkansas v. Oklahoma*, 503 U.S. 91, 107 (1992); *see also Montana v. United States E.P.A.*, 941 F. Supp. 945 (D. Mont. 1996); *City of Albuquerque v. Browner*, 97 F.3d 415 (10th Cir. 1996). Unfortunately, the Draft Permits provide no discussion or analysis of compliance with the Spokane Tribe's water quality standards. It is clear from historical data for PCBs and phosphorous at a minimum that the Tribe's water quality standards are not being met. As illustrated below, data from the Tribe indicates alarming low levels of dissolved oxygen at

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[3] 40 C.F.R. § 122.4 (d).
[4] It is the height of hypocrisy for Ecology to require the Idaho dischargers to meet Washington's downstream water quality standards, but not also require Washington dischargers to meet downstream Tribal water quality standards.
[5] 40 C.F.R. § 122.44(d).

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SR-16. Ecology has determined that only PCBs in the discharge have the potential to contribute to violations of downstream Tribal water quality criteria. As explained in responses to SR-1, SR-3, the final permit takes definitive steps to bring the Spokane River and Lake Spokane into compliance with the water quality standards for PCBs. The final permit specifies PCB effluent monitoring with an expected timeframe for setting a performance based PCB effluent limit; and establishes best management practices for PCB source identification and reduction. The performance based numeric limit, in addition to the BMP plan, will ensure the discharge will improve, not worsen, the PCB conditions in the Spokane River.

SR-17. See responses to SR-14 and SR-16.

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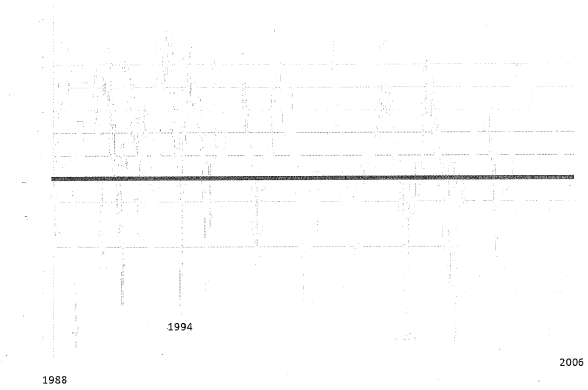
November 17, 2010 Draft NPDES Permit Comments Page 7 Porcupine Bay on the lower Spokane River. These levels have dipped as low as 0.2 mg/L, significantly below the tribal standard of 8.0 mg/L.[6] **Ranges of DO concentrations at Porcupine Bay** **note:**  Source: Spokane Tribe Moreover, as indicated by the draft PCB TMDL[7], the Tribe's PCB standards are not being met. Drastic reductions in PCBs are required to meet these standards. Again, the draft PCB TMDL anticipated compliance with Tribal water quality standards: > A PCB loading scenario was proposed based on meeting the Spokane Tribe water criterion for PCBs (3.37 pg/l). The scenario requires a 95% PCB load reduction at the Idaho border, a 97% load reduction in the Little Spokane River, and ≥99% reductions in municipal, industrial, and stormwater discharges. Draft PCB TMDL at 9. **SR-18** **Recommendation:** The Draft Permits lack any analysis of how the permitted discharge may cause or contribute to the DO and PCB problems on the Spokane Reservation. In fact, despite explicit analysis by Ecology indicating a need for significant reduction to meet the Tribe's PCB limits, the permits lack any PCB effluent limits. Legally, Ecology must analyze whether the [6] Tribal standards are available at http://www.epa.gov/waterscience/standards/wqslibrary/tribes/spokane.pdf. [7] Available at http://www.ecy.wa.gov/pubs/0603024.pdf.	**note:** The scanned figure is unreadable in this document. The original is readable, and shows the range of dissolved oxygen concentrations measured at Porcupine Bay during the years 1988 to 2006. SR-18. Ecology has previously addressed how the Spokane River DO TMDL modeling affects downstream Tribal water quality (see the TMDL's Response to Comments, pages C-84 to C-86). In summary, the DO TMDL focused on DO problems in Lake Spokane, upstream of Long Lake Dam. Nonetheless, the implementation of the TMDL will improve water quality in the Spokane Arm of the river. The Tribal Water Quality Standards do not fully define how dissolved oxygen criteria applies to waters of the Spokane Arm (e.g. treatment as a lake or river, and how natural conditions apply to this stretch). Further, model runs indicate that at the no source scenario (no anthropogenic sources of pollution) dissolved oxygen concentrations will decrease to as low as 1 mg/L in the bottom (stratified) portions of the Spokane Arm. It remains unknown if the TMDL improvements will meet Tribal water quality criteria. For PCBs, the draft Spokane River PCB TMDL fully describes the analysis for meeting tribal water quality standards. Since this TMDL is still draft, Ecology will not place the proposed WLAs in this permit. In the interim, the permit controls PCBs through implementation of source identification and reduction BMPs, and includes monitoring to better characterize the levels of PCBs discharged from the facility. With the monitoring data, Ecology expects to set a performance based PCB limit within this permit cycle. Ecology believes these are the appropriate and necessary first steps in bringing the Spokane River into compliance with PCB water quality criteria.

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  SR-18 (con'd) Dischargers cause or contribute to a violation on the Spokane Reservation and include water quality-based effluent limits to ensure compliance with those standards. **7. The Delta Elimination Plan is Poorly Defined and may not be Scientifically or Legally Defensible.** **SR-19** The Draft Permits include delta elimination plans which are not well defined. The plans are intended to allow the Dischargers to get credit for non-point source pollution reductions. In effect, the delta elimination plans establish a trading program, but they lack the requisite details necessary to allow the public to understand and provide input into trades.[8] **SR-20** The Draft Permits do not specify how Dischargers will engage in such a program and how trades might or might not impact compliance with numeric permit limits. The Draft Permits appear to envision that delta elimination will be allowed to help Dischargers meet wasteload allocations, although no specifics are provided regarding exactly how this accounting will be done, and how permit compliance will be monitored. This poorly defined delta elimination plan provides no reasonable assurance that significant reductions of pollutant loading from non-point sources could ever be accomplished or whether the future effluent limitations will ultimately be met. **SR-21** Beyond being poorly defined, it is questionable whether relying on delta elimination plans is scientifically or legally defensible. The Clean Water Act is silent on trading or delta eliminations. Washington law limits credits or offsets to the proportion of the non-point source reductions which occur beyond existing requirements. *See* WAC 173-201A-450. WAC 173-201A-450(1) provides, "A water quality offset occurs where a project proponent implements or finances the implementation of controls for point or non-point sources to reduce the levels of pollution for the purpose of creating sufficient assimilative capacity to allow *new or expanded discharges*." The regulation does not address offset for existing levels of discharge. Regardless, the regulation is clear that "[t]he improvements in water quality associated with creating water quality offsets for any proposed new or expanded actions *must be demonstrated to have occurred in advance* of the proposed action." *Id.* at 450(2)(b) (emphasis added). Accordingly, water quality offsets may be used for new and expanded discharges only *after* it is demonstrated that the improvements by the offset actions have occurred and are having the desired water quality benefits. **SR-22** Unlike point sources, non-point source pollution is notoriously difficult to control. Its sources are myriad - such as urban runoff, forestry practices, agricultural practices including crop and animal feeding operations, and recreation, including boats and marinas - and enforcement is difficult. As a result, Ecology must focus first on addressing the largest controllable sources first (point sources) while working on preventive and curative non-point source actions. [8] The Environmental Groups acknowledge participation in the Nutrient Trading Advisory Committee, but that process is in its infancy and should not be relied upon by Ecology or the Dischargers in lieu of meeting effluent limits.	SR-19. This permit lacks the details regarding the trading and offset plans because they haven't been developed yet. Ecology plans to develop a trading framework over the next several years. In addition, the Spokane River DO TMDL Implementation Advisory Committee may develop additional requirements for point to point and point to non-point trades and offsets. Ecology expects to include more detail regarding the trading and offset plans in subsequent permit renewals. SR-20. Again, Ecology expects the TMDL Implementation Advisory Committee will develop details on the accounting of pollutant credits and determining permit compliance. The compliance determination with permit limits will also depend on the nature of the trade/offset. For example, Ecology expects to modify both the TMDL and permit to include any bioavailability determinations that change permit limits. Ecology expects to better define delta elimination at the five year permit cycle, incorporating recommendations from the TMDL Implementation Advisory Committee. SR-21. Ecology expects that delta elimination will encompass more than just offsets as defined by the State Water Quality Standards. Delta elimination may include trading between pollutants, accounting for biologically un-available phosphorus, trading between facilities, etc. Delta elimination will include any measures that bridges the gap between what the Permittee will achieve with treatment technology and their final WQBELs. SR-22. Ecology believes this permit, as well as the other NPDES permits for Kaiser Aluminum, City of Spokane, and Liberty Lake Water and Sewer District, does focus control on total phosphorus, CBOD and ammonia discharged from these point sources.

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  SR-23 **Recommendation:** Over-reliance on non-point source reduction as a potential offset or trade in a delta elimination plan could frustrate efforts to meet water quality standards. Ecology must make it clear that the Dischargers *must* achieve their permit limits in order to meet water quality standards, and should not rely on the uncertainty surrounding the proposed delta elimination program. The Draft Permits must reflect this reality. **9. Additional Documents must be Available for Citizen Review.** SR-24 The Draft Permits call for the creation of additional documents, such as a technology selection protocol, engineering report, and offset plans. Ecology rules related to the administration of the NPDES program address public access to information, stating "the department shall make records relating to NPDES permits available to the public for inspection and copying." WAC 173-220-080(1). Accordingly, it should be made clear that these documents will be available for public review. **10. Record Retention** SR-25 The Draft Permits require record retention for a minimum of three (3) years. In order to facilitate self-monitoring and agency/citizen review, records should be retained for five (5) years to correspond with Clean Water Act's statute of limitations. 28 U.S.C. § 2462. **Specific Comments on Individual Permits** **Liberty Lake Draft Permit** **1. Initial Interim Limits should be Established Based on Existing Performance.** Liberty Lake's draft permit should only allow increases in pollution discharges up to existing flow limits until pollution reduction measures are implemented. To avoid making water quality problems worse, Ecology must cap flows and pollutant discharge from the facility at existing performance until interim and final effluent limits can be met. These caps should be based upon actual performance and design flows. **Recommendation:** The Liberty Lake draft permit should include a cap on flow based upon existing levels, as well as PCBs and all dissolved oxygen impacting pollutants. If the levels are allowed to increase, Ecology must explain how the increase is in keeping with its anti-degradation policy and anti-backsliding requirements. **Kaiser** **1. The Kaiser Draft Permit's Effluent Limitations Do Not Fulfill the Clean Water Act's Technology Forcing Objectives.** The ultimate goal of the Clean Water Act is the elimination of pollutant discharges. *See* 33 U.S.C. § 1251(a)(1). In light of this goal, "compliance with an effluent standard cannot fairly	SR-23. Ecology expects delta elimination will encompass more than just non-point to point trades or offsets. As explained earlier, delta elimination may also include trading between pollutants, accounting for biologically un-available phosphorus, trading between facilities, etc. For the Spokane River dischargers, implementation of treatment technology alone may not achieve the final WQBELs for ammonia, CBOD, or total phosphorus. In this case, the Permittees must rely on 'delta elimination' to meet their final WQBELs. Ecology believes the permit clearly states that the Permittee must meet these final WQBELs. With the uncertainty of what treatment technology may achieve, the permit retains the use of delta elimination to achieve compliance with the WQBELs. SR-24. Acknowledged. Ecology will make available to the public all submittals required by the permit. This will likely include posting to the Spokane River Forum website (spokaneriver.net), especially for important documents like the technology selection protocol, engineering report, and delta elimination plans. SR-25. Both State [WAC 173-220-210(2)(c)] and Federal [40 CFR 122.41(j)(2)] rules require the Permittee to keep records of monitoring activities and results for three years, unless extended due to unresolved litigation regarding the discharge of pollutants. Because both rules require the same recordkeeping requirements, Ecology has not lengthened the records retention requirement in the final permit.

be viewed as the ultimate object of the statute." *Natural Resources Defense Council, Inc. v. U.S. E.P.A.*, 822 F.2d 104, 123 (D.C. Cir. 1987). The Clean Water Act is therefore a technology forcing statute which continually requires dischargers to improve their water quality control. *See Entergy Corp. v. Riverkeeper, Inc.*, 129 S.Ct. 1498, 1515 (2009).

The Act's technology-forcing objectives are only fulfilled if each iteration of an NPDES permit contains Technology Based Effluent Limitations ("TBELs") that are sufficiently more stringent than the last, so as to force dischargers to implement technologies and practices that result in a net reduction in the discharge of pollutants. Not only does Kaiser's Draft Permit contain effluent limits for certain pollutants that are no more stringent than those contained in Kaiser's 1997 NPDES permit, but some of the effluent limits it establishes provide Kaiser with too much leeway and little incentive to continually upgrade and improve their pollution control technologies. Specifically, Kaiser's Draft Permit's TBELs for aluminum and chromium are identical to those contained in Kaiser's 1997 permit. The Draft Fact Sheet's suggestion, at pg. 10, that permit levels for chromium and aluminum should remain the same because Kaiser is able to meet this limit, is inconsistent with the Clean Water Act's technology-forcing objectives.

Moreover, a review of the discharge monitoring reports ("DMRs") submitted by Kaiser over the last five (5) years (during the critical period of March 1 to October 31) indicates that the TBELs for total suspended solids ("TSS") and oil and grease are so high as to provide the facility with little to no incentive to improve its pollution reduction efforts. For example, while the Kaiser Draft Permit sets the limit for TSS at 709.4 lbs/day (average monthly) and 1,142.10 lbs/day (maximum daily), the DMRs suggest that Kaiser's average monthly discharges rarely exceed 150 lbs/day and their maximum daily discharges rarely exceed 500 lbs/day. Similarly, while the Kaiser's Draft Permit sets the limit for oil and grease at 655.1 lbs/day (average monthly) and 710.5 lbs/day (maximum daily), the DMRs suggest that Kaiser's average monthly limits rarely approached 500 lbs/day. Because Kaiser's actual discharges seldom approach the TBELs established in their draft permit, these limitations cannot possibly represent the best pollution control technologies or pollution practices. *See* EPA NPDES Permit Writer's Manual 5.2.1.[9]

Recommendation: In order to fulfill the Clean Water Act's technology forcing objectives, not only should *all* of the TBEL in Kaiser's Draft Permit be more stringent than those contained in Kaiser's 1997 permit (including aluminum and chromium), but those limits should be sufficiently stringent so as to incentivize improved pollution prevention measures. Ecology should explain how it calculated TBELs, and why it did not lower limits that Kaiser is easily meeting with existing technology.

2. Specific Draft Permit Comments

Kaiser's Draft Permit lacks a discussion of contaminated groundwater and possible discharge through direct hydraulic connection to the river. Moreover, to the extent Kaiser is

[9] Available at: http://www.epa.gov/npdes/pubs/pwm_2010.pdf

diluting its wastewater stream with cooling water, effluent limits must be applied to the wastewater before contact with the cooling water.

Section S2, Page 9-12: This section should make clear that monitoring of Total PCBs needs to occur before dilution with non-contact water.

3. Draft Fact Sheet Comments

Page 4-5, Industrial Process: It is unclear why groundwater is being considered as wastewater. Please explain the basis for this. Dilution of effluent loads prior to discharge is implicitly prohibited by the requirement that permits contain mass load limitations for all pollutants except pollutants, which cannot appropriately be expressed by mass. 40 C.F.R. § 122.45(f)(1). Kaiser cannot use excess groundwater pumping to dilute its wastewater.

Page 5, Historic Releases/Clean-Up Activities: As stated above, excess groundwater cannot be used to dilute Kaiser's effluent. The use of cold groundwater appears to allow effluent to meet temperature criteria.

Page 8-11, Technology-Based Effluent Limitation: Kaiser's Draft Permit and Fact Sheet should quantify and characterize the "non-scope wastewater" described in this section to determine if AKART is being applied to the sources.

Did Ecology consider current performance, as opposed to just current permit limits, in setting the limits for chromium and aluminum?

Why was design flow, as opposed to actual flow, used for the BOD_5 and TSS loading described on page 11?

Page 16, Chart on Bottom of Page: There are two (2) "footnote a". In the second footnote a, the river at the Kaiser outfall is very different from conditions at the Stateline. Why was data from Stateline utilized?

Page 21, Total PCBs: Given the potential to cause or contribute to a water quality standard violation, Ecology cannot legally wait for a final PCB TMDL to give a PCB limit. Ecology must explain how this position is legal.

Page 21, Metals: End-of-the-pipe criteria is not sufficient for metals. If the river does not have the capacity to assimilate, Ecology cannot legally allow the discharge of metals, and Ecology must explain its rationale for including metals discharges.

Page 22, Toxic Pollutants: PCBs are not included in the toxic pollutants present in Kaiser's discharge; their draft permit only identifies aluminum and chromium as toxic pollutants present in Kaiser's discharge. This section needs to include PCBs.

COMMENTS TO NPDES WA-0000825, INLAND EMPIRE PAPER	RESPONSES
November 17, 2010 Draft NPDES Permit Comments Page 12 **City of Spokane** **1. Specific City Draft Permit Comments** **Page 7-9:** The Draft Permit does not include final water quality-based effluent limitations (WQBELs) for phosphorus, CBOD, and ammonia as required by 40 C.F.R. § 122.44(d). The appropriate WQBELs for the pollutants which affect dissolved oxygen in receiving waters are identified in the DO TMDL. It is unclear whether these are the final or interim effluent limits for this facility. If this is the interim limit, the permit should clarify as such and provide the final effluent limitation. **Page 7-9:** The pH limit of 6-9 is inconsistent with the limit described in the Fact Sheet of 6.0-7.8. Fact Sheet at 27. This inconsistency should be remedied and explained. **2. City Fact Sheet Comments** **Page 19, Consideration of Surface Water Quality-Based Limits for Numeric Criteria:** It is unclear why the 7Q10 flow of 757 cfs referred to on this page does not match the 7Q10 flow used in the chart on the bottom of the page. What is the basis for this discrepancy? **Page 19-20, Chart:** There is a reference in the bottom cell on page 19 to "yr. 2004 Spokane." This reference is confusing. The model was calibrated with 2001 data, not 2004. **Inland Empire Paper** **1. The Draft Permit's Effluent Limitations Do Not Fulfill the Clean Water Act's Technology Forcing Objectives.** **SR-26** As explained above, the Clean Water Act is a technology forcing statute. *See Entergy Corp. v. Riverkeeper, Inc.,* 129 S.Ct. 1498, 1515 (2009). NPDES permits play an important role in forcing dischargers to improve their water quality control. During the renewal process, the permit should look to areas where progress has and should be made. Thus, the fact that IEP has complied with its current effluent limits does not mean that its effluent limits should remain stagnant. **SR-27** The IEP draft permit is deficient with regard to BOD and TSS for two reasons. First, the limits for BOD and TSS fail to create more stringent limits. For example, during the new proposed low flow season (March-October), the permit lists an average monthly limit for TSS of 4525 lbs/day, and a maximum daily limit for TSS of 8450 lbs/day. These limits are the same as the current permit's low flow season; a choice made "[b]ecause of the water quality concerns during the low flow season." IEP Factsheet at 21. This reasoning is counter-intuitive. If the concern is water quality, then more stringent limits must be set in order to force IEP to discharge less. Allowing the limits to remain stagnant does not force new technology controls to be implemented and does not improve water quality.	SR-26. In reference to page 11 of the Spokane Riverkeeper comments, the Clean Water Act directed EPA to develop standards of performance (effluent limitations) for industrial categories, which included the following: BPT - Best Practicable control Technology currently available - applicable to conventional pollutants - to be achieved by July 1, 1977; BCT - Best Conventional pollutant control Technology (BCT) - the level of treatment that succeeds BPT for conventional pollutants. The deadline for achieving BCT was July 1, 1984 but was changed in the 1987 CWA amendments to March 31, 1989 BAT - Best Available Technology economically achievable - applicable to toxic pollutants. The deadline for achieving BAT was July 1, 1983 but was changed by the 1987 CWA amendments to March 31, 1989. Performance standards also include new source performance standards (NSPS) for new direct dischargers and pretreatment standards for existing indirect dischargers (PSES) and new indirect dischargers (PSNS). Others have characterized the Clean Water Act as a 'technology forcing statue' in that the Act mandated implementation of the above technologies for industrial discharges. However, Ecology has not interpreted these technology based requirements as meaning that '…each iteration of an NPDES permit contains Technology Based Effluent Limitations ("TBELs") that are sufficiently more stringent than the last…'. SR-27. As discussed above, Ecology is not obligated to create more stringent effluent limits for each permit renewal. Also, for clarification, Ecology did not propose an increase in TSS limits during the low flow season because of the dissolved oxygen concerns in the receiving water. The low flow TSS limits in the final permit are roughly 35% below the allowable BCT/NSPS limits of 7,016 lbs/day (daily average) and 13,185 (daily maximum). Similarly for the low flow season, the interim BOD limits in the final permit are over 70% below the BCT/NSPS limits. The permit does require new technology controls to meet the water quality based effluent limits for total phosphorus, CBOD, and ammonia during the low flow season.

COMMENTS TO NPDES WA-0000825, INLAND EMPIRE PAPER	RESPONSES

SR-28

Second, IEP's Discharge Monitoring Reports from March 2010 to January 2008 show that the mean Maximum Daily and Average Monthly discharges for BOD and TSS are far below their actual limits. There is no reason why the draft permit limits should be the same or *higher* than the current permit limits when IEP is not even discharging near its limits. If the goal is zero discharges, leaving so much leeway when not even necessary does not promote that goal.

SR-29

Further, the technology-forcing element of the CWA is ignored when IEP has no incentive to implement stricter controls. IEP's effluent limits should be based on the best available technology, not its actual discharges, but if a performance standard is utilized, Ecology should at a minimum recognize that IEP consistently discharges significantly less than its allowable limit, and reduce the limits accordingly.

Discharge Monitoring Reports for March 2010-January 2008 during *high* flow season months.[10]

Amount Discharged over Actual Limit	BOD (lbs/day)	TSS (lbs/day)
Average Monthly Mean	886	446
Average Monthly Limit	2820	4791
Maximum Daily Mean	1638	849
Maximum Daily Limit	5638	8938

Discharge Monitoring Reports for March 2010-January 2008 during *low* flow season months.

Amount Discharged over Actual Limit	BOD (lbs/day)	TSS (lbs/day)
Average Monthly Mean	679	537
Average Monthly Limit	2374	4525
Maximum Daily Mean	1460	1311
Maximum Daily Limit	4536	8450

SR-30

Recommendation: As evident in the tables above, IEP is discharging far below its effluent limits for several parameters. In their draft permit, during the high flow season (November-February), IEP is given an average daily TSS limit of 13,185 lbs/day. This is simply unnecessary when on average IEP only discharges 849 lbs/day. Even taking into a margin of safety, a limit of 13,185 lbs/day is far more than necessary and a new limit should be established reflecting IEP's technology capabilities and taking into consideration that Clean Water Act's technology-forcing requirements.

[10] Discharge Monitoring Reports up to March 2010, are available online at https://fortress.wa.gov/ecy/wplcsreports/.

SR-28. The March to October low flow season BOD limits should closely match the actual discharges from the facility (see Figure 3 of the fact sheet). Ecology based these limits on effluent data from 2004 to 2006. Ecology set a daily average limit at the 95th percentile; and the daily maximum at the 99th percentile of the BOD daily discharge values.

Ecology has re-evaluated its calculations for TSS and BOD limits during the high flow season. In the draft permit, Ecology used the BCT guidelines for the mechanical pulp process which existed at the site prior to promulgation of effluent standards, and NSPS guidelines for the deink pulping process installed after promulgation of the effluent standards.

Ecology has re-calculated technology based limits using NSPS guidelines for the increase in mechanical pulp production over the last permit cycle. Ecology used an 'existing' groundwood pulp production of 198 tons/day based on values from the 1998 fact sheet. The 198 tons/day consisted of 52.25 and 145.75 tons/day of groundwood from the Course Molded News (CMN) and Chemi-Mechanical Pulp (CMP) subcategories, respectively. EPA combined the Groundwood CMN and CMP subcategories into Mechanical Pulp subcategory in their latest revision to the Pulp, Paper, and Paperboard Effluent Guidelines.

The resulting production values, effluent guidelines, and effluent limits are shown at the front of these response to comments.

SR-29. Again, Ecology has not interpreted the technology based requirements of the Clean Water Act as meaning that NPDES permits must contain more stringent limits at each permit renewal.

Ecology calculated technology based BOD and TSS limits for Inland Empire Paper Company using BCT/NSPS standards. EPA technology based limitations provides consistent effluent limits for like industrial categories. These limits create a level playing field on a regional, State, and National level.

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SR-28

SR-29

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[10] Discharge Monitoring Reports up to March 2010, are available online at https://fortress.wa.gov/ecy/wplcsreports/.

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SR-29 (con'd). Setting more stringent performance based limits provides an economic disadvantage to facilities which have invested to upgrade/install more advanced wastewater treatment technology compared with other like facilities which have not invested to upgrade their treatment facilities.

In other words, setting more stringent limits than the federal technology based effluent guidelines punishes facilities performing well (those who have invested to improve treatment technology); and rewards those facilities performing poorly (those who have not invested to improve treatment technology).

SR-30. See responses to comments SR-28 and SR-29 above.

COMMENTS TO NPDES WA-0000825, INLAND EMPIRE PAPER	RESPONSES

2. Specific Inland Empire Paper Permit Comments:

SR-31 **Section S1, Page 7-9:** The permit lacks a pathogen effluent limit. Pulp and paper facilities are significant sources of pathogens.[11] The permit appears to lack any analysis of the potential for pathogen impacts to the river.

SR-32 The pH limit of 5 appears to be too low. The Kaiser permit calls for 6. What is the basis for the difference?

SR-33 **Section S2, Page 10-11:** The monitoring section should specify the methodology to be utilized for monitoring total phosphorus. Moreover, the permit should require monitoring of dioxins, pathogens, and endocrine disruptors associated with pulp and paper processes.

SR-34 **Section S5, Page 16, Schedule of Compliance**:
Footnote f, the permit lists the final WQBELs based on the DO TMDL. However, these limits mistakenly appear to be the limits for Kaiser. The correct limits should be ammonia: 24.29; total phosphorus: 1.23; CBOD: 123.2. *See* DO TMDL at 34.

3. Inland Empire Fact Sheet Comments

SR-35 **Page 8**: The narrative criteria paragraph refers the reader to several provisions of the WAC which no longer exists.

The antidegradation paragraph refers the reader to WAC 173-201A-070 which no longer exists.

SR-36 **Page 12, BOD5, Ammonia, and Total Phosphorous**: The Fact Sheet states that interim limits for these three parameters are contained in the draft permit but only an interim limit for phosphorous is included. This omission needs to be remedied.

SR-37 **Page 18, Toxic Pollutants:** The permit does not address endocrine disrupters associated with this facility. Pulp and paper effluents has been linked with altered reproductive function in freshwater fish.[12] The stretch of river impacted by this facility is known wild trout habitat. Ecology should explain this omission.

[11] *See* EPA, Protocol for Developing Pathogen TMDLs (2001) at 2-6, available at http://www.epa.gov/owow/tmdl/pathogen_all.pdf.
[12] *See* Jobling, *et al.*, Endocrine Disruption in Wild Freshwater Fish, Pure Appl. Chem., Vol. 75, Nos. 11–12, pp. 2219–2234 (2003), available at http://www.iupac.org/publications/pac/2003/pdf/7511x2219.pdf.

SR-31. Certain bacteria live in the intestinal tracts of animals and aid in the digestion of food. Fecal wastes may contain millions of these naturally occurring organisms plus pathogenic (disease-causing) bacteria, viruses and parasites. When fecal material pollutes a surface water, these pathogenic organisms may pose a health hazard to those who come in contact with the water.

Fecal Coliform are a group of bacteria found in the digestive systems of all warm blooded animals. Ecology uses the Fecal Coliform bacteria test as an indicator of fecal contamination in surface waters. However, Fecal Coliform bacteria also includes *Klebsiella* species. *Klebsiella* bacterial are not necessarily fecal in origin. In addition to the human gastrointestinal tract, *Klebsiella* can be found in soil, water, plants, and pulp and paper mill effluents.

As *Klebsiella* bacteria does not indicate fecal contamination, Ecology does not plan to test for, or regulate, the bacterial levels that may be present in this discharge.

SR-32. Ecology based pH limits on BCT and NSPS technology based standards, which give the range of pH between 5.0 and 9.0.

SR-33. Permit Condition S3 requires the Permittee use analytical test methods from 40 CFR Part 136.

The Permittee tested for and did not detect dioxins as part of their permit renewal application requirements. Ecology will not require monitoring for dioxins because Ecology believes there is no reasonable potential for the effluent to contain dioxin, or cause or contribute to receiving water quality criteria violations.

Presently, Ecology has no regulatory rules or guidance addressing possible endocrine disruption chemicals in pulp and paper mill effluents. However, EPA is currently assessing endocrine disruption chemicals of concern (see http://www.epa.gov/endo/). The EPA list does not include any chemicals detected in routine and special testing of Inland Empire's effluent.

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COMMENTS TO NPDES WA-0000825, INLAND EMPIRE PAPER	RESPONSES

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SR-34. Comment noted. Ecology sent revised pages of the corrected limits to interested parties on October 8, 2010.

SR-35. Comment noted. The fact sheet references an old version of the Water Quality Standards. Ecology has corrected these references in the final fact sheet.

SR-36. Comment noted. Ecology corrected this sentence in the final fact sheet.

SR-37. Ecology has no regulatory rules or guidance addressing possible endocrine disruption of fish (including rainbow trout) due to pulp and paper mill effluents. See response to SR-33.

COMMENTS TO NPDES WA-0000825, INLAND EMPIRE PAPER	RESPONSES
November 17, 2010 Draft NPDES Permit Comments Page 15 **Conclusion** As illustrated above, the Draft Permits have significant deficiencies that need to be addressed prior to issuance of the final permits. Moreover, in the event that significant changes are made to address these comments, comments of other parties, or as the result of changes to the TMDL that materially alter the permits, Spokane Riverkeeper, the Lands Council, the Kootenai Environmental Alliance, and the Gonzaga University Legal Assistance Environmental Law Clinic requests an opportunity to comment on those changes. Please do not hesitate to contact the undersigned if you have questions about these comments. Sincerely, Bart Mihailovich Spokane Riverkeeper Clinic Michael J. Chappell, Director Gonzaga Environmental Law Terry Harris Kootenai Environmental Alliance Mike Petersen The Lands Council	SR-38. Ecology has considered your comments and made changes to the permit as determined appropriate. SR-39. Ecology has made changes to the draft permit based on the comments received, and does not plan a second opportunity for public comment at this time.

COMMENTS TO NPDES WA-0000825, INLAND EMPIRE PAPER	RESPONSES

WASHINGTON STATE LEGISLATURE

November 12, 2010

Ms. Shara Trantum
Permit Coordinator
Department of Ecology
4601 N. Monroe St.
Spokane, WA 99205

Dear Ms. Trantum:

Thank you for the opportunity to provide comments concerning new permit standards governing discharges into the Spokane River and Lake Spokane. We appreciate efforts by the Department of Ecology (Ecology) to solicit public feedback and hope this will result in decisions that are inclusive of the wide range of social, economic and environmental factors important to our region.

Specifically, we wish to draw your attention to how changes in the permit standards may adversely affect the operation of Inland Empire Paper Company (IEP). For the past 100 years IEP has been an economic mainstay in the local community. As Spokane's third largest taxpayer, IEP brings in hundreds of millions of out-of-state dollars, provides 137 family-wage jobs, and is responsible for over 600 indirect regional jobs that support our economy.

SL-1 In view of IEP's long-standing contribution to the Spokane area, we are concerned that the new water quality permit requirements appear to be beyond the reach of technological achievement for them to meet, thus threatening their continued operation. For the last nine years IEP has worked with the community and Ecology on a TMDL plan to lower phosphorus levels in the Spokane River. They have invested over nine million dollars in technology upgrades to their wastewater treatment system and expect to invest at least another $10 million in an effort to achieve the most stringent water quality standard in the nation. Even with this significant investment, however, they are still unable to meet the proposed standard.

SL-2 We urge the Department of Ecology to continue working with IEP to help them achieve compliance with the water quality standards. We cannot afford to lose responsible companies like Inland Empire Paper Company because of standards that are unattainable.

Thank you for your attention to this matter.

Best regards,

Sen. Bob McCaslin
State Senator
District 4

Rep. Larry Crouse
State Representative
District 4

Rep. Matt Shea
State Representative
District 4

SL-1. Ecology acknowledges that the Permittee will likely rely on technology plus delta elimination to meet their final water quality based limits. The final permit includes language that enables the facility to meet their final limits with delta elimination options. These options may include trading consistent with Ecology's trading framework, pollutant equivalency, phosphorus bioavailability considerations, and a possible multi-facility bubble limitation.

SL-2. Ecology will continue to work with IEP, along with other Spokane River stakeholders, in order to achieve receiving water quality standards. Oftentimes, this process includes balancing the divergent viewpoints of these stakeholders, affected Tribes, and the public.